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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 247

Commodity Supplemental Food Program; Amended Administrative Funding Formula

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the Commodity Supplemental Food Program (CSFP) regulations to increase the portion of CSFP appropriations available to State and local agencies for program administration, consistent with the mandate of Pub. L. 98–92, amending Pub. L. 98–8. This change, effective for Fiscal Years 1984 and 1985, allows for the payment of the additional administrative costs incurred in distributing federally donated commodities to CSFP participants as part of the food package.

EFFECTIVE DATE: October 1, 1983.

FOR FURTHER INFORMATION CONTACT: Barbara P. Sandoval, Director, Supplemental Food Programs Division, FNS, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 756–3746.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291, and has been determined to be nonmajor. The rule will not have an annual effect on the economy of $100 million or more, will not cause a major increase in costs or prices, will not have a significant economic impact on competition, employment, investment, productivity, innovation, or on the ability of U.S. enterprises to compete. The rule has been reviewed in accordance with the requirements of the Regulatory Flexibility Act and will not have a significant economic impact on a substantial number of small entities. This rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980, Pub. L. 96–511.

Legislation

On September 2, 1983, the President signed Pub. L. 98–92. Section 2(8) of this law amends Section 209 of the Temporary Emergency Food Assistance Act of 1983 (Title II of Pub. L. 98–8) to modify the base from which CSFP administrative funds are derived. These regulations implement this amendment by requiring that CSFP administrative funding be available nationwide in amounts equal to the CSFP administrative costs of State and local agencies, except that such funding may not exceed 15 percent of the sum of (1) the annual program appropriation and (2) the value of commodities donated by the Department and distributed as part of the food package by CSFP local agencies.

Background

Some commodities purchased under the authority of the Commodity Credit Corporation (CCC) are donated to States for distribution to CSFP participants. Certain of these foods are given to participants as part of the CSFP food package, while others are distributed in addition to the package. Donated commodities expected to be available in Fiscal Year 1984 for use in food packages are rice (for pregnant and breastfeeding women and children) and nonfat dry milk. Because the cost of such foods is not charged to the program appropriation, their use reduces food package costs, and thus permits more persons to be served under the CSFP. Although the use of these commodities does reduce food costs, it also increases program administrative costs by enabling more persons to be served.

Section 209 of Pub. L. 98–8, as amended by Pub. L. 98–92 addresses this situation, increasing the amount of administrative funding available to States by broadening the base for administrative funding computations in two ways. The current base for CSFP administrative funding is set forth in section 5(a) of the Agriculture and Consumer Protection Act of 1973, as most recently amended by Pub. L. 97–98, which defines the base as "the amount appropriated for the provision of commodities." Pub. L. 98–92 amends this provision, incorporating the entire CSFP appropriation into the base. In addition, the Pub. L. 98–92 amendment includes in the base the value of CCC commodities distributed as part of the food package. As before, State and local agencies' CSFP administrative costs are funded up to a maximum of 15 percent of the base amount.

Earlier in the year, Congress enacted other legislation which served to defray costs of distributing CCC commodities for Fiscal Years 1982 and 1983. Section 209 of Pub. L. 98–8 provided that CCC funds totaling 15 percent of the book value of CCC commodities donated in Fiscal Year 1983 for use in the CSFP be paid to cover administrative expenses in connection with the distribution of these commodities. A supplemental appropriation in Pub. L. 98–63 made available $585,000 in CCC funds for use in retroactively paying CSFP costs associated with the distribution of CCC commodities in Fiscal Year 1982. These two laws contrast with the new funding formula in three ways. First, under these two laws additional administrative funding was provided from CCC, not from the CSFP appropriation. Second, this funding was intended to compensate for administrative costs associated with CCC commodities distributed *both* as part of, *and* in addition to, the food package. Third, the value of CCC commodities entered the computation base when the commodities were received by local agencies, not, as under amended Pub. L. 98–8, when the commodities are reported as distributed to participants.

Amended Administrative Funding Procedures for Fiscal Years 1984 and 1985 Consistent with Section 209 of Pub. L. 98–8, as amended by Pub. L. 98–92, these regulations provide that, for Fiscal Years 1984 and 1985, each State agency will receive in administrative funds its share of 15 percent of the total CSFP appropriation prorated on the basis of participation. State agencies will be graranteed 75 percent of this amount in the event of reallocations. State agencies will also receive 15 percent of the value of CCC-donated commodities distributed in food packages. Before the start of Fiscal Years 1984 and 1985, the Food and Nutrition Service (FNS) will

estimate individual States' likely distribution levels for such commodities. Each State will receive 15 percent of the value of its estimated distribution of such commodities. FNS will identify and account for these funds separately from administrative funds provided as State agencies' pro rata shares of 15 percent of the total CSFP appropriation.

After the end of the fiscal year, FNS will compute the value of commodities reported as actually distributed in food packages to ensure that each State agency has received administrative funding in the amount of 15 percent of the value of such commodities, provided that this amount does not exceed actual administrative costs.

Because this regulation is necessary to provide additional administrative funds in accordance with Public Law 98–8, as recently amended by Public Law 98–92, and it is the Department's desire to make these funds available as soon as possible after the start of the fiscal year, Robert E. Leard, Administrator of the Food and Nutrition Service, has determined that good cause exists for issuing a final rather than a proposed rule. Similarly, good cause exists for making this rule effective less than 30 days following the date of promulgation because the rule relieves and existing restriction on funding, thus conferring a benefit on program participants and the State and local agencies administering the program.

List of Subjects in 7 CFR Part 247

Food assistance programs, Food donations, Grant programs, Social Programs, Indians, Infants and children, Maternal and child health, Nutrition education, Public assistance programs, CSFP, Women.

Accordingly, 7 CFR Part 247 is amended as follows:

PART 247—COMMODITY SUPPLEMENTAL FOOD PROGRAM

In 7 CFR 247.10, paragraph (b) is revised to read as follows:

§ 247.10 Administrative funding.

* * * * *

(b) *State agency funding.* (1) Funds for total State administrative costs for each of Fiscal Years 1984 and 1985 shall be allocated by FNS based on 15 percent of the sum of the annual appropriation for the program and the value of commodities donated by the Department and distributed by local agencies as part of the food package.

(2) From the portion of program funds equal to 15 percent of the program appropriation, each State shall receive a proportionate administrative grant based on its average participation reported (up to the authorized caseload level) for the latest three months for which data are available prior to the beginning of a fiscal year. Each State agency shall receive its share of this funding on a quarterly basis. FNS reserves the right to adjust participation figures used in this computation upward or downward to ensure adequate funds are allocated when FNS believes that the participation level reported will not reflect future plans for operation, such as when a State agency plans to start or terminate the program during the year, or when a State agency's participation has increased or decreased significantly during recent months.

(3) In addition to the funding provided under paragraph (b)(2) of this section, States shall receive administrative funding to support distribution of federally donated commodities distributed as part of the program food package. Prior to the beginning of both Fiscal Years 1984 and 1985, FNS shall estimate the value of such commodities expected to be distributed to participants by local agencies in each State during that fiscal year. Fifteen percent of this estimated amount shall be provided to each State agency. Funds provided under this paragraph shall be identified and accounted for by FNS separately from funds provided under paragraph (b)(2) of this section. After the end of the fiscal year, FNS shall compute the actual value of such commodities reported as distributed to participants by local agencies in each State. Unit values of such commodities shall be provided by the Agricultural Stabilization and Conservation Service. FNS shall make whatever adjustments are necessary to ensure that each State agency has received administrative funding equal to 15 percent of the value of such commodities reported as distributed to participants by its local agencies during the fiscal year.

(4) Participation of new State agencies during the course of the fiscal year will depend on the availability of funds.

(5) FNS shall use caseload assignments to ensure that funds appropriated are not exceeded. FNS reserves the right to periodically recover and redistribute unspent administrative funds and unused caseload slots.

(6) To ensure that State agencies can properly budget for program operations, FNS guarantees that 75 percent of the administrative funding provided to each State under paragraph (b)(2) of this section will be protected from recoveries during the current fiscal year.

(7) The State agency may retain a percentage of administrative funding for State level use, based on the following formula: 15 percent of the first $50,000; plus 10 percent of the next $100,000; plus 5 percent of the next $250,000. The State may retain a maximum amount of $30,000 annually for its administrative expenditures. However, if the State agency provides warehousing services, FNS approval may be requested at the beginning of the applicable fiscal year for funds greater than those allowed under the formula; provided, the State agency can document the need and ensure that the increase will not impose undue hardship on local agencies. The remaining funds and any unused funds at the State level shall be distributed to the local agencies.

* * * * *

(Sec. 5, Pub. L. 93–86, 87 Stat. 249, as added by sec. 1304(b)(2), Pub. L. 95–113, 91 Stat. 980 (7 U.S.C. 612c note); sec. 1335, Pub. L. 97–98, 95 Stat. 1293 (7 U.S.C. 612c note); sec. 209, Pub. L. 98–8, 97 Stat. 35 (7 U.S.C. 612c note); sec. 2(8), Pub. L. 98–92 (7 U.S.C. 612c note))

(Catalog of Federal Domestic Assistance Program No. 10.565)

Dated: October 6, 1983.

Robert E. Leard,

Administrator, Food and Nutrition Service.

[FR Doc. 83-27912 Filed 10-13-83; 8:45 am]

BILLING CODE 3410-30-M

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 83-302]

Wheat Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends, on an emergency basis, the "Flag Smut (Foreign Strains)" regulations by renaming the regulations as the "Wheat Regulations"; by designating as prohibited articles seeds, plants, straw (other than straw without heads and which have been processed or manufactured into articles such as decorative wall hangings, clothing or toys), chaff, and products of the milling process (i.e., bran, shorts, thistle, sharps and pollards) other than flour of *Triticum* spp. (wheat) from Afghanistan, India, Iraq, Mexico and Pakistan because Karnal bunt is known to exist in these countries; by designating as prohibited articles plants of *Triticum* spp. (wheat) and of *Aegilops* spp. (barb goatgrass, goatgrass) from foreign countries and localities where foreign strains of flag smut occur, and by allowing prohibited articles imported by

the Department to enter the United States through certain designated ports of entry.

Articles designated as prohibited articles under the regulations are prohibited from being imported into the United States unless imported by the U.S. Department of Agriculture for experimental or scientific purposes under certain conditions. This action is necessary in order to prevent the introduction into the United States of Karnal bunt and foreign strains of flag smut.

DATES: The effective date of the interim rule is October 14, 1983. Written comments must be received on or before December 13, 1983.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected in Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Frank Cooper, Staff Officer, Regulatory Services Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 637, Federal Building, 6505 Belcrest,Road Hyattsville, MD 20782, 301–436–8248.

SUPPLEMENTARY INFORMATION:

Emergency Action

Harvey L. Ford, Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, has determined that an emergency situation exists which warrants publication of this interim rule without prior opportunity for public comment. This action is necessary to prevent the introduction into the United States of Karnal bunt, *Tilletia indica* Mitra [*Neovossia indica* (Mitra) Munakar], and foreign strains of flag smut, *Urocystis agropyri* (Preuss) schroet.

Further, pursuant to the administrative procedure provisions of 5 U.S.C. 553, it is found upon good cause that notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest; and good cause is found for making this interim rule effective less than 30 days after publication of this document in the **Federal Register**. Comments will be solicited for 60 days after publication of this document, and a final document discussing comments received and any amendments required will be published in the **Federal Register** as soon as possible.

Background

This document amends the "Flag Smut (Foreign Strains)" regulations (7 CFR 319.59 et seq.) by renaming the regulations as the "Wheat Regulations"; by designating as prohibited articles seeds, plants, straw (other than straw without heads and which have been processed or manufactured into articles such as decorative wall hangings, clothing or toys), chaff and products of the milling process (i.e., bran, shorts, thistle, sharps and pollards) other than flour of *Triticum* spp. (wheat) from Afghanistan, India, Iraq, Mexico and Pakistan; and by designating as prohibited articles plants of *Triticum* spp. (wheat) and *Aegilops* spp. (barb goatgrass, goatgrass) from flag smut infested countries and localities. These regulations are intended to prevent the introduction into the United States of Karnal bunt and foreign strains of flag smut, both plant diseases that affect the designated articles. This document also amends § 319.59–2 to allow prohibited articles imported under certain conditions to enter the United States through certain designated ports of entry.

Karnal Bunt

Karnal bunt is an injurious plant disease that does not occur within the United States. Karnal bunt, caused by a highly infectious plant pathogenic smut fungus, *Tilletia indica* Mitra, [*Neovossia indica* (Mitra) Munakar], affects the seed heads of wheat, including triticale plants, and can substantially reduce the yield and lower the quality of the wheat seed heads. As a result, Karnal bunt can have serious economic consequences for wheat growers.

Prior to the publication of this document, the regulations did not contain provisions prohibiting the importation of the designated articles from these countries because of Karnal bunt. Karnal bunt has been known to exist in the countries of Afghanistan, India, Iraq and Pakistan. Recently, Karnal bunt was found to occur in Mexico.

Seeds, plants, straw (other than straw without heads and which have been processed or manufactured into articles such as decorative wall hangings, clothing or toys), hulls, chaff and products of the milling process (i.e., bran, shorts, thistle, sharps and pollards), other than flour of *Triticum* spp. (wheat), are articles likely to be infested with or contaminated by Karnal bunt. At the present time, there are no known practical means of treating, inspecting or otherwise identifying such articles that are contaminated or infested with Karnal bunt. Therefore, in order to prevent the intrduction into the United States of Karnal bunt it is necessary on an emergency basis to amend the regulations by designating as prohibited articles seeds, plants, straw (other than straw without heads and which have been processed or manufactured into articles such as decorative wall hangings, clothing or toys), chaff, and other products of the milling process (i.e., bran, shorts, thistle sharps, and pollards), other than flour, of *Triticum* spp. (wheat), from countries infested with Karnal bunt.

The Department has made a determination that it is not necessary to regulate straw without heads that are processed or manufactured into articles such as toys, clothing or decorative wall hangings because it appears that these articles would not pose a significant risk of introducing Karnal bunt into the United States. Specifically, Karnal bunt is a disease spread by spores which are produced only in the seeds contained in wheat heads. Therefore, it is necessary to prohibit straw with heads from entry into the United States. Even without the heads, however, wheat straw from Karnal bunt infested areas could be contaminated with spores prior to the straw being processed or manufactured into an article. The manipulation of straw that occurs when it is cleaned, washed, bleached or otherwise processed or manufactured into articles would eliminate any significant risk that spores would survive the processing or manufacturing stage and somehow be introduced into the United States. Therefore, straw without heads processed or manufactured into articles such as wall hangings, toys or clothing are exempted from the list of regulated articles.

Karnal bunt is known to occur in the countries of Afghanistan, India, Iraq, Mexico and Pakistan. Therefore, the above named articles are regulated when coming from Afghanistan, India, Iraq, Mexico and Pakistan because they are likely to be infested with or contaminated by Karnal bunt when coming from these countries. The designation of these articles as prohibited articles prohibits them from being imported or offered for entry into the United States unless imported by the U.S. Department of Agriculture for experimental or scientific purposes under certain conditions.

Flag Smut

Foreign strains of flag smut are plant diseases caused by foreign strains of highly infectious fungi, *Urocystis agropyri* (Preuss) schroet, which attack wheat and substantially reduce its yield. It is not found in the United States.

Foreign strains of flag smut occur in Afghanistan, Algeria, Australia, Bangladesh, Bulgaria, Chile, People's Republic of China, Cyprus, Egypt, Falkland Islands, Greece, Guatemala, Hungary, India, Iran, Iraq, Israel, Italy, Japan, Korea, Libya, Morocco, Nepal, Oman, Pakistan, Portugal, Romania, Spain, Tanzania, Tunisia, Turkey, Republic of South Africa, Union of Soviet Socialist Republics and Venezuela (these countries and localities are collectively referred to below as flag smut infested countries and localities).

Based on a recent review of the regulations concerning prohibited articles from flag smut infested countries and localities (7 CFR Part 319), it was discovered that plants of *Triticum* spp. (wheat) and *Aegilops* spp. (barb goatgrass, goatgrass) were not designated in the regulations as prohibited articles because of foreign strains of flag smut. Until the present time, it was not considered necessary to prohibit such plants because it did not appear that such plants were products imported from these countries into the United States. Recently, however, the Department has found that plants of *Triticum* spp. (wheat) and *Aegilops* spp. (barb goatgrass, goatgrass) are being occasionally offered for importation from flag smut infested countries. Such plants, coming from flag smut infested countries and localities, are as likely to be infested or contaminated with foreign strains of flag smut as any of the other prohibited articles. At present, there does not appear to be any feasible method for inspecting or treating such plants for foreign strains of flag smut, or other procedures for preventing the introduction of flag smut into the United States. Therefore, in order to prevent the possible introduction into the United States of accompanying foreign strains of flag smut, it is necessary, on an emergency basis, to designate plants of *Triticum* spp. (wheat) and *Aegilops* spp. (barb goatgrass, goatgrass) from flag smut infested countries and localities as prohibited articles. The designation of these plants as prohibited articles prohibits them from being imported or offered for entry into the United States unless imported by the U.S. Department of Agriculture for experimental or scientific purposes under certain conditions.

This document also amends the regulations by making some additional nonsubstantive changes to the list of prohibited articles because of foreign strains of flag smut. Specifically, prior to the publication of this document in the **Federal Register**, § 319.59 of Title 7 of the CFR regulated the following as prohibited articles because of foreign strains of flag smut:

> Grain, straw (other than straw, with or without heads, processed or manufactured for use indoors, such as for decorative purposes or for use as toys), hulls, chaff, and products of the milling process other than flour (i.e., bran, shorts, thistle sharps, and pollards) of *Triticum* spp. (wheat), of *Aegilops* spp. (barb goatgrass, goatgrass), or of any intergeneric cross which includes *Triticum* spp. (wheat) or *Aegilops* spp. (barb goatgrass, goatgrass) as a parent.

This document amends this list of regulated articles by substituting the term "seed" for the term "grain," by deleting the reference to "hulls," and by deleting the separate listing of any intergeneric cross which includes *Triticum* spp. (wheat), or *Aegilops* spp. (barb goatgrass, goatgrass), as a parent in the above list of prohibited articles. As explained below, these are not substantive changes.

The term "seed" is substituted for the term "grain" to conform to preferred nomenclature. These terms, as used in the regulations, mean the same thing.

The term "hulls" is deleted because the listed articles do not have hulls.

The specific reference to any intergeneric cross which includes *Triticum* spp. (wheat) or *Aegilops* spp. as a parent is not necessary and can be confusing. Specifically, the term "spp." is defined in § 319.59–1 of the regulations to mean "(a)ll species, clones, cultivars, strains, varieties, and hybrids of a genus." These intergeneric crosses are hybrids of *Triticum* spp. (wheat) or *Aegilops* spp. Therefore, since such seeds, straw, chaff, and products of the milling process of *Triticum* spp. (wheat) and *Aegilops* spp. are listed as prohibited articles, this includes such seeds, straw, chaff, and products of the milling process derived from any intergeneric cross which includes *Triticum* spp. (wheat) and *Aegilops* spp. as a parent, without a specific reference to these intergeneric crosses.

Imports of Prohibited Articles

As noted above, prohibited articles are allowed to be imported by the U.S. Department of Agriculture for experimental or scientific purposes under certain conditions. Under the regulations in effect prior to the publication of this document, these articles were required to be imported at the Plant Germplasm Quarantine Center, Building 320, Beltsville Agriculture Research Center East, Beltsville, MD 20705; imported pursuant to a Departmental permit issued for such articles which is kept on file at the Plant Germplasm Quarantine Center; imported under conditions specified on the Departmental permit and found by the Deputy Administrator to be adequate to prevent the introduction into the United States of tree, plant, or fruit diseases (including foreign strains of flag smut and Karnal bunt), injurious insects, and other plant pests, i.e., conditions of treatment, processing, growing, shipment, disposal; and imported with a Departmental tag or label securely attached to the outside of the container containing the articles or securely attached to the articles if not in a container, and with such tag or label bearing a Departmental permit number corresponding to the number of the Departmental permit issued for such articles. Provisions in 7 U.S.C. 155 specifically authorize such articles to be imported for experimental or scientific purposes by the U.S. Department of Agriculture in accordance with such conditions. These specified procedures are necessary for purposes of identifying prohibited articles imported for experimental or scientific purposes; for assuring that the conditions for treatment, processing, growing, shipment, and disposal will be understood; and for assuring that qualified personnel are available to take necessary action in accordance with such conditions.

This document amends § 319.59 of the regulations to also allow prohibited articles imported with a Departmental permit to also be imported at any port of entry with an asterik listed in § 319.37–14(b) of the regulations. These are ports of entry where inspectors are stationed and authorized to take action in connection with the importation or offer of importation of any articles which are designated or would be designated in this subpart. These ports of entry are specifically equipped with inspection and treatment facilities to detect and take necessary action if the presence of accompanying injurious plant diseases, injurious insect pests, or other plant pests are found. The availability of these special ports makes it unnecessary to send such articles to the Germplasm Quarantine Center in Beltsville, Maryland, in all instances. The addition of these special ports of entry to the regulations will allow the imported articles to go directly from the nearest port of entry to the area where the

scientific or experimental research is being conducted.

In addition to the amendments described above, this document amends the regulations by adding a definition of "Karnal bunt" and by renaming the "Flag Smut (Foreign Strains)" Regulations to "Wheat Regulations." This is done for purposes of clarity since with the publication of this interim rule regulating Karnal bunt, the regulations in Subpart 319 will regulate articles for foreign strains of flag smut and Karnal bunt, both diseases of wheat.

Executive Order 12291 and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and Secretary's Memorandum No. 1512–1, and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this rule will have an effect on the economy of less than 100 million dollars; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Alternatives were considered in connection with the interim rule. Consideration was given concerning whether (1) to make no changes with respect to these articles, or (2) to allow these articles to be imported by any importers in accordance with specified restrictions, such as requiring inspection and treatment; or (3) to designate the articles described above as prohibited articles and thereby prohibit them from being imported into the United States from designated countries unless imported by the U.S. Department of Agriculture for experimental or scientific purposes under certain conditions. Alternative (3) is adopted because it has been determined that at this time there does not appear to be a feasible method for inspection or treatment of the designated articles for Karnal bunt or for flag smut, or other procedures for preventing the possible introduction into the United States of the accompanying plant disease (Karnal bunt or flag smut). However, as treatment measures are developed which can be shown to be effective for the life-span of the spore or as other safeguards are developed which will provide an effective method for identifying, treating or otherwise preventing the introduction of contaminated or infected articles and preventing its introduction into the United States, the Department will review its regulatory policy to see whether the importation restrictions can be modified such that the articles can be regulated in a less restrictive manner.

Finally, it appears that there is no feasible alternative to consider regarding the requirement in Executive Order 12291 that agencies choose the alternative that maximizes net benefits to society at the lowest net cost.

Mr. Bert W. Hawkins, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities. Specifically, the rule, among other things, designates as prohibited articles seeds, plants, straw (other than straw without heads and which have been processed or manufactured into articles such as decorative wall hangings, clothing or toys), chaff and products of the milling process of *Triticum* spp. (wheat) from Mexico. Based on information compiled by the Department, it appears that in 1982 approximately 35, out of a total 2,037, metric tons of the designated articles imported into the United States were imported from Mexico.

Further, the rule also designates as prohibited articles (1) seeds, plants, straw (other than straw heads and which have been processed or manufactured into articles such as decorative wall hangings, clothing or toys), chaff and products of the milling process to *Triticum* spp. (wheat) from Afghanistan, India, Iraq, and Pakistan, and (2) plants of *Triticum* spp. (wheat) and *Aegilops* spp. (barb goatgrass, goatgrass) from foreign countries and localities where foreign strains of flag smut occur.

Prior to the publication of this document, all articles, except plants from flag smut countries and localities were designated as prohibited articles. Further, based on information compiled by the Department, it appears that the proposal to regulate such plants would have little impact, if any, on small entities. Specifically, a review of imports through the ports of entry indicate that the volume of imports of such plants is so low that no commercial statistics have been kept on them. It appears that when such plants of the named species are imported from flag smut infested countries and localities, they are imported noncommercially and for decorative purposes only.

List of Subjects in 7 CFR Part 319

Agricultural commodities, Imports, Plant diseases, Plants (Agriculture), Quarantine, Transportation, Karnal bunt, Flag smut, Wheat.

PART 319—FOREIGN QUARANTINE NOTICES

Under the circumstances referred to above, Part 319—Foreign Quarantine Notices is amended by amending "Subpart Flag Smut (Foreign Strains)" as follows:

Authority: Section 105, 107; 71 Stat. 32 and 34, as amended; 37 Stat. 854; secs. 7 and 9, 37 Stat. 317 and 318, as amended; sec. 10, 45 Stat. 468 (7 U.S.C. 150dd, 150ff, 155, 160, 162 and 164a); 7 CFR 2.17, 2.51 and 371.2(c).

§ 319.59 [Amended]

1. In Subpart 319.59, the title "Subpart Flag Smut (Foreign Strains)" is renamed "Subpart—Wheat Diseases."

2. In § 319.59(a) the words "or Karnal bunt" are added after the words "of foreign strains of flag smut" in the first sentence.

3. In § 319.59(b) the words "and Karnal bunt" are added after the words "including foreign strains of flag smut" in the first sentence.

4. In § 319.59–1 a new definition "Karnal bunt" is added in alphabetical order to read as follows:

Karnal bunt. A plant disease caused by a highly infectious plant pathogenic smut fungus, *Tilletia inidica* Mitra, [Neovossia indica (Mitra) Manakur], which attacks wheat and substantially reduces its yield and substantially lowers the quality of the wheat grain, and which is new to or not widely prevalent or distributed within and throughout the United States.

5. In § 319.59–1 the definition of prohibited articles is revised to read as follows:

Prohibited article. Any class of seed, plant, or other plant product specified as prohibited articles in § 319.59–2(a) or (b).

6. In § 319.59–2 paragraph (a)(1)(i) would be revised to read as follows:

§ 319.59–2 Prohibited Articles.

(a) * * *

(1)(i) Seeds, plants, and straw (other than straw, with or without heads and which have been processed or manufactured for use indoors, such as for decorative purposes or for use as toys), chaff, and products of the milling process (i.e., bran, shorts, thistle sharps, and pollards) other than flour of *Triticums* spp. (wheat) or of *Aegilops* spp. (barb goatgrass, goatgrass).

7. In § 319.59–2 paragraph (b) is redesignated as paragraph (c) and a new paragraph (b) is added to read as follows:

§ 319.59–2 Prohibited Articles.

* * * * *

(b) The articles listed in paragraph (b)(1) of this section from the countries and locations listed in paragraph (b)(2) of this section are prohibited articles because of Karnal bunt:

(1) Seeds, plants, straw (other than straw without heads and which have been processed or manufactured into articles such as decorative wall hangings, clothing or toys), chaff, and products of the milling process (i.e., bran, shorts, thistle sharps, and pollards) other than flour of *Triticum* spp. (wheat).

(2) Afghanistan, India, Iraq, Mexico and Pakistan.

8. In redesignated paragraph (c) of § 319.59–2 in the introductory text, the phrase "paragraph (a)" is revised to read "paragraphs (a) or (b)" and paragraph (c)(2) is revised to read as follows:

§ 319.59–2 Prohibited Articles.

* * * * *

(c) * * *

(2) Imported at the Plant Germplasm Quarantine Center, Building 320, Beltsville Agricultural Center East, Beltsville, MD 20705 or at any port of entry with an asterisk listed in 7 CFR 319.37–14(b).

* * * * *

Done at Washington, DC, this 11th day of October 1983.

William F. Helms,

Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 83-27993 Filed 10-13-83; 8:45 am]

BILLING CODE 3410-34-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 240

[Release Nos. 33-6493; 34-20264; File No. S7-951]

Foreign Securities

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission today announces the adoption of revisions to a current rule, known as the information-supplying exemption which exempts certain foreign securities from registration under the Securities Exchange Act of 1934. These revisions generally treat foreign securities quoted on the automated quotation system of the National Association of Securities Dealers ("NASDAQ") the same as foreign securities listed on a United States ("U.S.") exchange. Generally, non-Canadian foreign securities currently quoted on NASDAQ could continue to rely on the exemption indefinitely subject to certain conditions. Canadian securities, however, currently quoted on NASDAQ could continue to rely on the exemption until January 2, 1986. Revisions also are made to other rules to clarify the concept of voluntary entry into the U.S. capital markets.

EFFECTIVE DATE: October 14, 1983.

FOR FURTHER INFORMATION CONTACT: Carl T. Bodolus (202) 272–3246, Office of International Corporate Finance, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: Foreign private issuers whose securities are not trading on one of the national securities exchanges are now exempt from registering with the Commission. The Commission today is revising that exemption so that it will no longer be available to foreign issuers whose securities trade on NASDAQ. This change is being made because the Commission believes that trading on NASDAQ is substantially the same as trading on an exchange and therefore the information available for NASDAQ traded companies should be essentially the same as the information available for exchange traded companies. The Commission will "grandfather" foreign private issuers who are now trading on NASDAQ and relying on the exemption. Canadian issuers will be grandfathered for two years and all other foreign issuers will be grandfathered indefinitely. However, no additional foreign equity securities can begin trading on NASDAQ unless they are registered with the Commission.

I. Background

The Commission is adopting revisions to Rule 12g3–2 (17 CFR 240.12g3–2) [1] under the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. 78a et seq. (1976 and Supp. III 1979)] that would terminate the availability of that exemptive rule to certain foreign issuers with securities quoted in NASDAQ and clarify several provisions of that rule.[2] Amendments to Rule 12g–3 (17 CFR 240.12g–3) and Rule 15d–5 (17 CFR 240.15d–5) relating to successor issuers further clarify the application of the periodic reporting requirements of the Exchange Act to issuers that acquire reporting issuers by the issuance of securities. The concept of the "essentially U.S. issuer" exemption in the definition of foreign private issuer in Rule 405 (17 CFR 230.405) and Rule 3b–4 (17 CFR 240–3b–4) is also revised. Rule 12g–1 (17 CFR 240–12g–1) is also clarified.

The Commission solicited public comments on these changes in Release No. 33–6433 (October 28, 1982) [47 FR 50292]. One hundred sixty-three comment letters were received on the proposals.[3] One hundred twenty-six were from individuals, thirteen from issuers, eight from the securities industry, five from law firms, three each from associations and banks maintaining facilities for American Depositary Receipts, two each from analysts and self-regulatory organizations, and one from a foreign securities exchange. Most commentators addressed only the proposal that the information-supplying exemption in Rule 12g3–2(b) be no longer available for securities quoted in an automated inter-dealer quotation system, *i.e.*, NASDAQ.

II. Registration for NASDAQ Listing

Proposed paragraph (d) (3) of Rule 12g3–2 would have denied the information-supplying exemption to securities quoted on NASDAQ. Foreign securities quoted only in the pink sheets would continue to be exempt under the information-supplying exemption in Rule 12g3–2(b). Virtually all comments received addressed this proposal.

A. Comments

Twenty-six commentators supported this proposal. These commentators stated that the proposal would result in more disclosure to investors, increase investor confidence, expand the Commission's ability to enforce the antifraud provisions, and would eliminate the unequal treatment of foreign issuers, who now can use the information-supplying exemption to get on NASDAQ, and U.S. issuers, who must register their securities for inclusion in NASDAQ. A Canadian broker stated that many investors prefer NASDAQ-quoted Canadian securities on the incorrect assumption that they

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[1] Paragraph (b) of that rule exempts certain foreign securities from registration under section 12(g) of the Exchange Act if the issuer furnishes the Commission with copies of disclosure documents made public under foreign law or regulations. Release No. 33–6433 (October 28, 1982) [47 FR 50292] discusses this rule in more detail.

[2] As explained below, the the securities of issuers listed in accompanying Release No. 34–20265, and currently quoted in NASDAQ are generally grandfathered.

[3] Copies of these comment letters as well as a comment highlight prepared by the staff are in File No. S7–951 and are available for public inspection and copying at the Commission's Public Reference Room.

were registered with the Commission. Another individual stated that the proposal failed to go far enough and that the Commission should require Canadian issuers to report on Form 10–K, 10–Q and 8–K instead of Forms 20–F and 6–K. Some commentators stated that some Canadian corporations misuse the exemption and also make illegal distributions of their securities in the U.S.

One hundred thirty-three commentators opposed this proposal. Twenty-two commentators disagreed with the analysis in the proposing release that obtaining inclusion in NASDAQ is voluntary entry into the U.S. capital market for various reasons. Eight stated that the acts necessary to obtain inclusion in NASDAQ are minimal and should not be used to justify the imposition of Exchange Act reporting. Others noted that in the past the ADR depositary banks were allowed to list certain foreign securities and continue to pay the fees. Twelve stated that most foreign issuers have their securities included in NASDAQ as a convenience to U.S. shareholders and the issuer does not receive as many benefits as U.S. issuers.

Eighteen commentators opposing the proposals stated that they were unaware of any problems with the current rules and thirty-one stated that the information-supplying exemption provided investors with adequate information.

All commentators opposing the proposal assumed that many foreign issuers would withdraw from NASDAQ and have their securities traded in the pink sheets instead of registering. The following unfavorable consequences were identified: increased price spreads, decrease in information, price quotes not carried in newspapers, less liquid market and fewer institutions in the market, absence of NASD surveillance, and delays in execution of transfers. These factors could cause a price drop of twenty percent according to one estimate.

Other objections to this proposal are: increased red tape, increased burden on foreign issuers, loss of investment opportunities and limits on freedom of choice, forced trading in foreign markets, forced use of disreputable dealers or foreign brokers, increased Commission budget, unfair change in policy, inconsistency with Congressional interest, possible retaliation by foreign governments, and reinforced fears of foreign issuers that the Commission repeatedly changes its rules.

Two commentators estimated the cost of registering securities under Section 12(g). One estimated it to be $150,000. A law firm, representing some Canadian issuers with registered securities, estimated the cost to be $12,000–$15,000. A Canadian issuer subject to the reporting requirements of the Exchange Act stated it did not find reporting to be burdensome in terms of time or cost.

B. Revision of Rule 12g3–2

Since its commencement in 1971, NASDAQ has matured into a major securities market,[4] providing securities quoted on NASDAQ with heightened visibility and access to active trading markets. As a result, NASDAQ has become an attractive alternative to exchange listing for foreign issuers which desire access to U.S. trading markets for the convenience of their U.S. shareholders or to raise capital, but which wish to avoid registration under Section 12. Although registration is required for exchange listing, foreign securities have been included in NASDAQ without Section 12 registration through use of the information-supplying exemption of Rule 12g3–2(b), which was adopted in 1967, prior to the start of NASDAQ, and was intended to exempt from registration foreign issuers whose securities were traded in the U.S. without the voluntary action of the issuer.

In the past, foreign securities could be included in NASDAQ without the participation of the issuer; at present, however, the consent of the issuer is required before a foreign security can be quoted in NASDAQ.[5] Accordingly, the Commission believes that foreign securities included in NASDAQ should be regarded prospectively as voluntarily seeking U.S. trading markets, and hence should be denied the information-supplying exemption. Also, the Commission believes that the increased administrative sanctions available to the Commission resulting from the revisions are necessary. Finally, the Commission believes it is appropriate to eliminate any undue differences in the disclosure requirements of and the treatment of U.S. and foreign issuers with securities quoted on NASDAQ.

Nevertheless, the Commission acknowledges the concerns of many of the commentators. The Commission believes that applying the revisions prospectively and grandfathering the securities, as described below, is a pragmatic balance of these competing policies.[6]

Many of the foreign issuers that appear to be complying with the information-supplying exemption initially established it prior to the formation of NASDAQ or in its early years. As discussed above, until recently, persons other than the issuer could obtain the NASDAQ listing for foreign securities. Imposing the revised rule against such issuers could force them to withdraw from NASDAQ, consequently depriving U.S. investors of the accustomed market for such securities and, in some cases, reducing the depth and liquidity for these securities.

Securities of the non-Canadian issuers in compliance with the information-supplying exemption as of October 5, 1983 and currently quoted in NASDAQ are grandfathered indefinitely.[7] However, the exemption will be extended to the Canadian securities only until January 1986. The recent hot-issue market in securities from Canada has created problems and abuses of the rule. Some issuers appear to have used the exemption as a means to make unregistered, illegal distributions of their securities over NASDAQ.[8] Several commentators urged the Commission to address directly the problems associated with some of the issuers from Canada rather than using an overly broad approach as proposed. The adopted revision is consistent with the Commission's position of treating Canadian issuers the same as U.S. issuers for many purposes.[9] Canadian issuers generally must file the same reports as domestic issuers under the Exchange Act and, unlike other foreign issuers, are subject to the proxy regulations and the short-swing profit recovery provisions. Moreover, the requirements for Canadian issuers to ultimately register their securities under Section 12 do not appear to be particularly burdensome in light of the

[4] The monthly average share volume on NASDAQ for the first six months of 1983 was approximately three-fourths that of the New York Stock Exchange and nearly seven times larger than the volume of the American Stock Exchange.

[5] As explained in the proposing release, foreign securities may be included in NASDAQ directly or in ADR form. These amendments apply equally to both.

[6] Grandfathering is unusual in the securities laws, but see Section 3(a)(1) of the Securities Act and Section 12(f) of the Exchange Act.

[7] Unless, of course, the securities are delisted from NASDAQ or the issuer fails to maintain the information-supplying exemption.

[8] The Commission wishes to remind issuers and broker-dealers of their responsibilities during distributions of unregistered securities. See Release Nos. 33–4445 [February 2, 1962] [27 FR 2312] and 33–5188 [July 17, 1971].

[9] In 1980, the Commission solicited public comment on whether to eliminate the distinction between Canadian and other foreign private issuers. Few comments, even those from Canadian issuers, supported elimination. Release No. 33–6235 [September 2, 1980] [45 FR 63693].

similarity of the accounting principles and disclosure standards of the U.S. and Canada. Canadian issuers, unlike other foreign issuers, can use Form S–18 and the limited offering exemption of Regulation A. The coming-to-rest concept in Release No. 33–4708 (July 9, 1964) [29 FR 9828] treats offerings of U.S. issuers in Canada the same as offerings in the U.S. due to the close nexus of the markets. The Commission believes the revised rule, as adopted, adequately addresses the problems without undue market interference. The two year time period was selected to provide Canadian issuers with sufficient time to adjust their procedures or to register their securities and for the market to take into account any changes in the way such securities trade.

The Commission considered the alternative of imposing seasoning or suitability tests as conditions for listing on NASDAQ in reliance on the information-supplying exemption. Commentators suggested tests such as a history of active trading in the foreign market; minimum income, minimum assets, and minimum capitalization. The Commission declined to adopt any of those tests because of the difficulty in forming objectively the proper test, and the lack of any specific theoretical basis for a particular test.

III. Other Revisions

The Commission received no adverse comments on the proposed revisions to the successor issuer rules and has adopted them without change.

Several commenters objected to the proposed repeal of paragraph (d) of Rule 12g3–2 that exempts from Section 12(g) registration the securities of a non-Canadian issuer with any class of securities registered under Section 12(b) or any issuer filing reports under Section 15(d). The major consequences of repealing paragraph (d) is to require some of the 83 foreign issuers now subject to a Section 15(d) reporting obligation to register under Section 12(g) and thereby making their securities subject to the Williams Act.[10] The commentators to the proposal pointed out potential problems due to inconsistent tender offer regulation among various countries.

The Williams Act has applied to Canadian and, since 1979, to other foreign equity securities registered under Section 12(b). Approximately 52 Canadian and 65 non-Canadian issuers have securities registered under this section. The proposal would merely end the anomaly of exempting foreign issuers now subject to reporting obligations because of the exchange listing of debt securities or because they have had a registration statement become effective under the Securities Act. Few problems have arisen due to the inconsistent regulations of various countries, but the Commission is aware of the possibility of such problems. As in the past, with respect to foreign securities subject to the Williams Act, such situations will continue to be resolved on a case-by-case basis.

Another consequence of the repeal of paragraph (d) and the consequent registration of securities under Section 12(g) is that certain Canadian issuers would become subject to the proxy requirements of Sections 14(a) and 14(c) of the Exchange Act and the rules thereunder and the short-swing profits provisions of Section 16 of the Exchange Act and the rules thereunder. One commentator stated that the proposal would make Securities Act registration of equity securities more burdensome, extend U.S. regulation to the internal corporate affairs of Canadian issuers, and conflict with the voluntarism principle explained in the proposing release.

More than 50 Canadian issuers are currently subject to such regulations and the repeal of paragraph (d) requires some of the 23 Canadian issuers subject to Section 15(d) to register their securities under Section 12(g). Few problems have arisen in the past under these rules. The Commission believes it is anomalous to exempt those Canadians that have made a registered public offering in the U.S., who would otherwise be subject to Section 12, but not those whose securities are listed on a U.S. exchange or are registered under Section 12 of the Exchange Act.

Foreign issuers that generally are owned and managed by U.S. persons are considered to be essentially U.S. issuers and are ineligible for any of the exemptions or forms available to other issuers organized under foreign law. As amended, Rule 405 and Rule 3b–4 set forth two elements to determine whether an issuer is an essentially U.S. issuer.[11] The first element is that fifty percent of the issuer's shares are held by U.S. residents. The second element is that one of three conditions is present: (1) The issuer's business be principally administered in the U.S.; (2) a majority of the issuer's directors or executive officers be U.S. persons; or (3) fifty percent of the assets of the issuer be located in the U.S. These elements combined concepts in the former and proposed definitions. The Commission believes these amendments will prevent evasion but are unlikely to apply to many issuers not intended to be covered by the concept.

Regulatory Flexibility Act

A copy of the Final Regulatory Flexibility Analysis is available upon request from the Office of International Corporate Finance, Room 3094 (3–6), Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C., 20549, telephone (202) 272–3246.

List of Subjects in 17 CFR Parts 230 and 240

Reporting and recordkeeping requirements, Securities.

Text of Amendments

17 CFR Chapter II is amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. By revising the definition of "Foreign Private Issuer" in § 230.405 to read as follows:

§ 230.405 Definitions of terms.

* * * * *

Foreign private issuer: The term "foreign private issuer" means any foreign issuer other than a foreign government except an issuer meeting the following conditions: (1) More than 50 percent of the outstanding voting securities of such issuer are held of record either directly or through voting trust certificates or depositary receipts by residents of the United States; and (2) any of the following: (i) The majority of the executive officers or directors are United States citizens or residents, (ii) more than 50 percent of the assets of the issuer are located in the United States, or (iii) the business of the issuer is administered principally in the United States. For the purpose of this paragraph, the term "resident," as applied to security holders, shall mean any person whose address appears on the records of the issuer, the voting trustee, or the depositary as being located in the United States.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

2. By revising paragraph (c) of § 240.3b–4 to read as follows:

[10] Sections 13(d), 13(e), 14(d), 14(e) and 14(f) of the Exchange Act regulate certain acquisitions of securities and tender offers.

[11] The conditions are in the except clause in the definition of a foreign private issuer. Rules 405 [17 CFR 230.405] and 3b–4 [17 CFR 240.3b–4].

§ 240.3b–4 Definition of "foreign government," "foreign issuer," and "foreign private issuer."

* * * * *

(c) *Foreign private issuer.* The term "foreign private issuer" means any foreign issuer other than a foreign government except an issuer meeting the following conditions: (1) More than 50 percent of the outstanding voting securities of such issuer are held of record either directly or through voting trust certificates or depositary receipts by residents of the United States; and (2) any of the following: (i) The majority of the executive officers or directors are United States citizens or residents, (ii) more than 50 percent of the assets of the issuer are located in the United States, or (iii) the business of the issuer is administered principally in the United States. For the purpose of this paragraph, the term "resident," as applied to security holders, shall mean any person whose address appears on the records of the issuer, the voting trustee, or the depositary as being located in the United States.

3. By revising § 240.12g–1 to read as follows:

§ 240.12g–1 Exemption from section 12(g).

An issuer shall be exempt from the requirement to register any class of equity securities pursuant to section 12(g)(1) if on the last day of its most recent fiscal year the issuer had total assets not exceeding $3,000,000 and, with respect to a foreign private issuer, such securities were not quoted in an automated inter-dealer quotation system.

4. By revising paragraphs (a) and (b) and adding new paragraph (c) to § 240.12g–3 to read as follows:

§ 240.12g–3 Registration of securities of successor issuers.

(a) Where in connection with a succession by merger, consolidation, exchange of securities or acquisition of assets, equity securities of an issuer, not previously registered pursuant to section 12 of the Act, are issued to the holders of any class of equity securities of another issuer which is registered pursuant to section 12 of the Act, the class of securities so issued shall be deemed to be registered pursuant to section 12 of the Act unless upon consummation of the succession such class is exempt from such registration other than by Rule 12g3–2 (§ 240.12g3–2 of this chapter) or all securities of such class are held of record by less than 300 persons..

(b) Where in connection with a succession by merger, consolidation, exchange of securities or acquisition of assets, equity securities of an issuer, which are not registered pursuant to section 12 of the Act, are issued to the holders of any class of equity securities of another issuer which is required to file a registration statement pursuant to section 12 but has not yet done so, the duty to file such statement shall be deemed to have been assumed by the issuer of the class of securities so issued and such issuer shall file a registration statement pursuant to section 12 of the Act with respect to such class within the period of time the predecessor issuer would have been required to file such a statement, or within such extended period of time as the Commission may authorize upon application pursuant to § 240.12b–25 of this chapter, unless upon consummation of the succession such class is exempt from such registration other than by Rule 12g3–2 (§ 240.12g3–2 of this chapter) or all securities of the class are held of record by less than 300 persons.

(c) An issuer that is deemed to have a class of securities registered pursuant to section 12 according to either paragraph (a) or (b) of this section shall file reports on the same forms and such class of securities shall be subject to the provisions of sections 14 and 16 to the same extent as the predecessor issuer, except as follows:

(1) An issuer that is not a foreign issuer shall not be eligible to file on Form 20–F (§ 249.220f of this chapter) or to use the exemption in Rule 3a12–3 (§ 240.3a12–3 of this chapter).

(2) A non-Canadian foreign private issuer shall be eligible to file on Form 20–F and to use the exemption in Rule 3a12–3.

(3) A Canadian foreign private issuer shall be eligible to file on Form 20–F and to use the exemption in Rule 3a12–3 only if the predecessor issuer filed on Form 20–F and was eligible to use such exemption and it does not have or has not had during the twelve months prior to the consummation of the succession a reporting obligation (suspended or active) under section 15(d) of the Act or a class of securities registered under section 12.

5. By revising section 240.12g3–2 to read as follows:

§ 240.12g3–2 Exemptions for American depositary receipts and certain foreign securities.

(a)(1) Securities of any class issued by any foreign private issuer shall be exempt from section 12(g) of the Act if the class has fewer than 300 holders resident in the United States. This exemption shall continue until the next fiscal year end at which the issuer has a class of equity securities held by 300 or more persons resident in the United States. For the purpose of determining whether a security is exempt pursuant to this paragraph, securities held of record by persons resident in the United States shall be determined as provided in Rule 12g5–1 (§ 240.12g5–1 of this chapter) except that securities held of record by a broker, dealer, bank or nominee for any of them for the accounts of customers resident in the United States shall be counted as held in the United States by the number of separate accounts for which the securities are held. The issuer may rely in good faith on information as to the number of such separate accounts supplied by all owners of the class of its securities which are brokers, dealers, or banks or a nominee for any of them.

(2) Registration of any class of security by a foreign private issuer pursuant to section 12(g) of the Act shall be terminated ninety days, or such shorter period as the Commission may determine, after the issuer files a certification with the Commission that the number of holders resident in the United States of such class of security is reduced to less than 300 persons. The Commission shall, after notice and opportunity for hearing, deny termination of registration if if finds that there are 300 or more holders resident in the United States. Termination of registration shall be deferred pending final determination on the question of denial.

(b)(1) Securities of any foreign private issuer shall be exempt from section 12(g) of the Act if the issuer, or a government official or agency of the country of the issuer's domicile or in which it is incorporated or organized:

(i) Shall furnish to the Commission whatever information in each of the following categories the issuer since the beginning of its last fiscal year (A) has made or is required to make public pursuant to the law of the country of its domicile or in which it is incorporated or organized, (B) has filed or is required to file with a stock exchange on which its securities are traded and which was made public by such exchange, or (C) has distributed or is required to distribute to its security holders;

(ii) Shall furnish to the Commission a list identifying the information referred to in paragraph (b)(1)(i) of this section and stating when and by whom it is required to be made public, filed with any such exchange, or distributed to security holders;

(iii) Shall furnish to the Commission, during each subsequent fiscal year, whatever information is made public as described in (A), (B) or (C) of paragraph (b)(1)(i) of this section promptly after

such information is made or required to be made public as described therein;

(iv) Shall, promptly after the end of any fiscal year in which any changes occur in the kind of information required to be published as referred to in the list furnished under paragraph (b)(1)(ii) of this section or any subsequent list, furnish to the Commission a revised list reflecting such changes; and

(v) Shall furnish to the Commission in connection with the initial submission the following information to the extent known or which can be obtained without unreasonable effort or expense: the number of holders of each class of equity securities resident in the United States, the amount and percentage of each class of outstanding equity securities held by residents in the United States, the circumstances in which such securities were acquired, and the date and circumstances of the most recent public distribution of securities by the issuer or an affiliate thereof.

(2) The information required to be furnished under paragraphs (b)(1)(i) and (b)(1)(ii) of this section shall be furnished on or before the date on which a registration statement under section 12(g) of the Act would otherwise be required to be filed. Any issuer furnishing information under paragraph (b)(1)(i) of this section shall notify the Commission that it is furnished under that paragraph.

(3) The information required to be furnished under this paragraph (b) is information material to an investment decision such as: the financial condition or results of operations; changes in business; acquisitions or dispositions of assets; issuance, redemption or acquisitions of their securities; changes in management or control; the granting of options or the payment of other remuneration to directors or officers; and transactions with directors, officers or principal security holders.

(4) Only one complete copy of any information or document need be furnished under paragraph (b)(1) of this section. Such information and documents need not be under cover of any prescribed form and shall not be deemed to be "filed" with the Commission or otherwise subject to the liabilities of section 18 of the Act. Press releases and all other communications or materials distributed directly to securityholders of each class of securities to which the exemption relates shall be in English. English versions or adequate summaries in English may be furnished in lieu of original English translations. No other documents need be furnished unless the issuer has prepared or caused to be prepared English translations, versions, or summaries of them. If no English translations, versions, or summaries have been prepared, a brief description in English of any such documents shall be furnished. Information or documents in a language other than English are not required to be furnished. If practicable, the Commission file number shall appear on the information furnished or in an accompanying letter.

(5) The furnishing of any information or document under paragraph (b) of this rule shall not constitute an admission for any purpose that the issuer is subject to the Act.

(c) Depositary Shares registered on Form F-6 (§ 239.36 of this chapter), but not the underlying deposited securities, are exempt from section 12(g) of the Act under this paragraph (c).

(d) The exemption provided by paragraph (b) of this rule shall not be available for the following securities:

(1) Securities of a foreign private issuer that has or has had during the prior eighteen months any securities registered under section 12 of the Act or a reporting obligation (suspended or active) under section 15(d) of the Act;

(2) Securities of a foreign private issuer issued in a transaction to acquire by merger, consolidation, exchange of securities, or acquisition of assets, another issuer that had securities registered under section 12 of the Act or a reporting obligation (suspended or active) under section 15(d) of the Act; and

(3) Securities quoted in an "automated inter-dealer quotation system" or securities represented by American Depositary Receipts so quoted unless all the following conditions are met:

(i) Such securities were so quoted on October 5, 1983 and have been continuously traded since;

(ii) The issuer is in compliance with the exemption in paragraph (b) of this section on October 5, 1983 and has continuously maintained the exemption since; and

(iii) After January 2, 1986, the issuer is organized under the laws of any country except Canada or a political subdivision thereof.

6. By redesignating the first paragraph of § 240.15d-5 as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 240.15d-5 Reporting by successor issuers.

* * * * *

(b) An issuer that is deemed to be a successor issuer according to paragraph (a) of this section shall file reports on the same forms as the predecessor issuer except as follows:

(1) An issuer that is not a foreign issuer or that is a North American foreign private issuer shall not be eligible to file on Form 20-F (§ 240.220f of this chapter).

(2) A non-North American foreign private issuer shall be eligible to file on Form 20-F.

Statutory Basis

These amendments are adopted pursuant to authority in Sections 6, 7, 8, 10, and 19(a) of the Securities Act of 1933; Sections 12, 13, 15(d), and 23(a) of the Securities Exchange Act of 1934.

(Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 301, 54 Stat. 857; sec. 8, 68 Stat. 685; sec. 1, 79 Stat. 1051; sec. 308(a)(2), 90 Stat. 57; secs. 12, 13, 15(d), 23(a), 48 Stat. 892, 894, 895, 901; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 203(a), 49 Stat. 704; sec. 202, 68 Stat. 686; secs. 3, 4, 6, 78 Stat. 565-574; secs. 1, 2, 82 Stat. 454; sec. 28(c), 84 Stat. 1435; secs. 1, 2, 84 Stat. 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 18, 89 Stat. 117, 118, 119, 155; sec. 308(b), 90 Stat. 57; secs. 202, 203, 204, 91 Stat. 1494, 1498, 1500; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78*l*, 78m, 78o(d), 78w(a))

By the Commission.

George A. Fitzsimmons,

Secretary.

October 6, 1983.

[FR Doc. 83-27934 Filed 10-13-83; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 7, 10, 22, 113, 145, 158, and 191

[T.D. 83-212]

Customs Regulations Revision Relating To Drawback; Specialized and General Provisions

AGENCY: Customs Service, Treasury.

ACTION: Final revision.

SUMMARY: As a part of the general revisions of the Customs Regulations, the Customs Service is revising its regulations which govern drawback. Drawback is a refund or remission, in whole or in part of a customs duty, internal-revenue tax, or fee lawfully assessed or collected because of a particular use made of the merchandise on which the duty, tax, or fee was assessed or collected. The rationale for drawback has always been to encourage American commerce or manufacturing, or both. This revision sets forth the general provisions applicable to all drawback claims and specialized provisions applicable to specific types of

drawback claims. This revision also follows a new format, and includes changes or additions in language to clarify the current provisions. Some of the substantive changes are new and some are based upon interpretative rulings. Furthermore, based upon the comments received from the public in response to the notice of proposed revision and Customs initiative, other changes have been made in the document as proposed, especially with regard to "same condition" drawback and the notice of exportation procedures.

EFFECTIVE DATE: December 12, 1983.

FOR FURTHER INFORMATION CONTACT:

Legal aspects: George Steuart, Carriers, Drawback and Bonds Division (202-566-5856);

Operational aspects: Betty L. Colburn, Duty Assessment Division (202-566-5307);

Audit aspects: Maury Johnson, Regulatory Audit Division (202-566-2812); U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

Background

Drawback is a refund or remission, in whole or in part of a customs duty, internal-revenue tax, or fee lawfully assessed or collected because of a particular use made of the merchandise on which the duty, or tax, or fee was assessed or collected.

The rationale for drawback has always been to encourage American commerce or manufacturing, or both. It permits the American manufacturer to compete in foreign markets without the handicap of including in his costs, and consequently in his sales price, the duty paid on imported merchandise.

Two examples of drawback follow:

1. "A" imports Australian grease wool, and produces from it wool top which is sold in the United States. At a later date, "A" uses domestic grease wool of the same kind and quality to produce wool top and the wool top is exported. "A" can claim and receive drawback in the duty he paid on the Australian grease wool.

2. "B" imports semiconductors which he uses in manufacturing television sets. If the television sets are exported, "B" may claim and receive drawback on the duty paid on the semiconductors.

This revision is part of the general revision of the Customs Regulations and amends Chapter 1, title 19, Code of Federal Regulations (19 CFR Chapter I), by removing present Part 22 and adding a new Part 191.

Part 191 sets forth the general provisions applicable to all drawback claims and specialized provisions applicable to specific types of drawback claims. Part 191 follows a new format, and contains changes or additions in language to clarify the current provisions. Substantive changes to Part 22 have been made in Part 191. Some of the changes are new and some are based upon interpretative rulings. Revised Part 191 is divided into sixteen subparts.

Significant changes adopted in the revision include:

1. Defining the primary terms used throughout the revision;

2. Removing the application procedure which precedes the filing of the drawback proposal and approval of a specific drawback contract;

3. Providing a sample drawback proposal to a prospective drawback claimant upon request;

4. Providing for the use of a general drawback contract prepared by Customs Headquarters and published in the Customs Bulletin for use by any manufacturer or producer desiring drawback who can comply with the conditions of the contract;

5. Retaining the certified notice of exportation procedure in 2 circumstances used to establish exportation of articles for drawback purposes;

6. Discussing materials used for construction and equipment of vessels and aircraft built for foreign account and ownership;

7. Discussing same condition drawback;

8. Discussing distilled spirits, wines, or beer which is unmerchantable or does not conform to sample or specification; and

9. Removing regulations relating to bags and meat wrappers, sugar and syrups, linseed oil, crude petroleum and petroleum derivatives, piece goods and fur skins and skin articles.

Notice of Proposed Revision

On August 26, 1982, Customs published a docment in the **Federal Register** (47 FR 37563), providing the public with 90 days to submit written comments on the proposed revision of the drawback regulations. Commenters had until November 24, 1982, to submit their comments. Customs received several requests to extend the period of time for the submission of comments claiming that because of the complexity of the issues involved, additional time was needed to prepare and submit thorough comments. Customs believed that the requests had merit and, therefore, extended the period of time for the submission of written comments for approximately 60 days to January 21, 1983. Customs received over 150 comments on the proposed revision. In general, the commenters considered the proposed revision to be a vast improvement over Part 22 and offered suggestions for further consideration. Two major areas of concern in the proposed revision related to same condition drawback and the elimination of a certified notice of exportation procedure. Based upon the comments received and Customs initiative, numerous changes have been made relating to same condition drawback which we believe are responsive to the concerns of the commenters. Customs also has determined to retain the certified notice of exportation procedure in the following two specified circumstances:

1. Certification of notice of exportation at the time of exportation; and

2. Certification of notice of exportation by mail.

Discussion of Comments

Subpart A

Comment: A statement should be added to Subpart A that the new regulations will not abrogate drawback contracts in existence at the time the final rule becomes effective. Analysis: It

Analysis: It is Customs position that a drawback contract in existence at the time the final rule becomes effective will be honored by Customs and will remain in effect for its duration. Drawback claimants operating under an existing contract need not file a new proposal. Customs believes, however, there is no need to place such a statement in the regulations.

Comment: The definition of "drawback" in § 191.2(a) should be amended by either removing the references to "duty or tax" or be expanded to include the term "fee."

Analysis: Because same condition drawback includes the term "fee," Customs has expanded the definition to include this term.

Comment: The statutory phrase "less 1 per centum" is not included in the definition of "drawback."

Analysis: By providing in the definition "in whole or in part," Customs has included all types and percentages of drawback returns. For example, for merchandise exported from a Customs warehouse, the return of drawback is 100 percent of the duties paid.

Comment: There should be a reference in the drawback definition to the non-

payment of drawback on products and by-products of wheat.

Analysis: Although such a reference is provided in 19 U.S.C. 1313(a), Customs believes that this provision is not of sufficient general interest to be included in § 191.2(a).

Comment: Section 191.2(a) provides for drawback because of a "particular use made of the merchandise." Therefore, there should be a separate definition of "same condition drawback" (which is based upon imported merchandise not being "used" within the United States); or in the alternative, the drawback definition also should define the "use" to which merchandise must be put to obtain drawback upon exportation.

Analysis: Customs considers the exportation of merchandise to be a "use" within the definition of drawback; and therefore, this definition also includes same condition drawback. Furthermore, same condition drawback is discussed in § 191.4(a)(9).

Comment: The term "designated merchandise" should be removed from § 191.2(b) and the term "imported merchandise" should be added in its place. A delineation of the terms "designated" and "identified" should be made.

Analysis: Customs considers the term "designated merchandise" to be a technical term of art and should be retained. "Identification" is being used here in a common, non-technical meaning. To clarify this point, the definition in § 191.2(b) has been changed to read:

(b) *Designated Merchandise.* Designated merchandise means imported duty-paid merchandise or drawback products identified (either physically or by accounting records), by a drawback claimant as the basis for a drawback claim under 19 U.S.C. 1313(b).

Comment: The phrase "manufactured * * * under a drawback contract" in § 191.2(g) should be clarified so that the claimant would know that drawback can be claimed on goods exported prior to approval of the contract.

Analysis: Customs believes this addition is unnecessary. Section 22.4(n) (which provided that no drawback would be allowed on articles exported before the date of Customs receipt of an application for drawback) was removed by T.D. 79-65 (44 FR 11061). Furthermore, § 191.61 provides that drawback claims may be filed and completed within three years after the date of exportation of the articles on which drawback is claimed.

Comment: The last sentence of § 191.2(g) is confusing and, therefore, should provide a clarifying reference to drawback products used in secondary manufacture. Another suggestion involved using the phrases "dual status" or "dual characteristics" in the last sentence.

Analysis: Customs has reviewed this sentence and concluded that it is clear and that any additional language would be surplusage.

Comment: Section 191.2(h) should permit as an option the submission of computer-generated Customs Forms 7543, 7573, 7575 A&B, and 7577 A&B, plus any other forms that may be appropriate. All forms should be "8½ x 11" and require only one signature. Customs Form 7583, listed as a current form, was discontinued. It is suggested that Customs Form CF 7585 is intended, since it is listed in proposed § 191.82(e)(2).

Analysis: Customs believes that references in the regulations to computer-generated forms and their size are inappropriate. Computer-generated forms may be used provided they follow the same format, contain all of the information required, state the form number and title and contain the necessary certification(s) and signature(s). Customs notes, however, that a reduction from "8½ x 14" to "8½ x 11" is planned for all forms. If only one signature is needed, only that signature will be required on the new form. CF 7583 was abolished. CF 7585 will be indicated in its place. This error also appears under § 191.163(e); Therefore, the "7583" is changed to "7585" in both sections.

Comment: The language of § 191.2(m) defining "the same kind and quality" should be clarified, and examples should be added.

Analysis: Customs believes that the language of this definition is clear and disagrees with the suggestion to add examples because they may prove to be misleading and provide little assistance.

Comment: The definition of "verification" in § 191.2(o) is so broad that it places no limitation upon the authority of a Customs auditor in conducting a verification. Therefore, there would be unnecessary requests for information by the auditor. Verification should not entail all records and the examination should apply only to those records involved in the drawback program.

There were several suggestions to modify the language of the definition including limiting the examination of records to import, manufacture, and export documents or adding the words * * * "and maintained in the ordinary course of the business." It is claimed that the auditor does not have an absolute right to demand the financial records of a drawback claimant, based upon the holding in CSD 82-38, dated October 5, 1981 (published in Vol. 16 No. 9, Cus. Bul. p. 16, March 3, 1982), which held,* * *. "Absent a cogent reason, an auditor does not have an absolute right to demand the financial records of a drawback claimant who has made available records which *prima facie* show importation, manufacture, and exportation for purposes of the drawback law."

Analysis: It is Customs position that the definition as written is correct. The definition is not as broad as the commenters suggest. Examination concerns only those transactions involving drawback. However, the scope of the audit, which includes the examination of financial records, is reserved by Customs, not the claimant. The reservation by Customs of the right to include in its examination all financial records, must be read in light of CSD 82-38. Although Customs will examine first the importation, manufacturing, and exportation records, it reserves absolutely the right to demand all financial records for examination.

Customs notes that it does not prescribe the specific record system for a claimant to maintain. This allows claimants to use their own accounting systems in support of claims and precludes the use of singular purpose systems. Additionally, in the performance of the examination of records, Customs generally can accommodate central or decentralized control of records by a claimant.

Comment: Clarification for the term "group of claims" was requested.

Analysis: In the performance of a verification, Customs may select one claim or a multiple number of claims under one contract. Under some circumstances, claims under all contracts may be selected. Therefore, this phrase is used.

Comment: The language of § 191.10(c) should be substituted for § 191.2(o) claiming this would appropriately reduce the authority of the auditor.

Analysis: Section 191.10(c) represents a repeat of the authority for verification contained in § 22.43(c) and is considered properly placed. The definition for verification is new and its purpose is to provide additional explanation for drawback claimants based upon previous interactions between the public and Customs. Therefore, the suggestion is not adopted.

Comment: The definition of "abstract of manufacturing records" in § 191.2(p) is unnecessary in that Customs Forms

7575 and 7577 are "the abstracts of a manufacturer's records."

Analysis: Customs disagrees because claimants should know they may provide an abstract of their own which does not involve using Customs forms. Mere reference to only those forms as abstracts may lead claimants to believe they are the only means of submitting an "abstract" of manufacturing records.

Comment: A definition should be added to § 191.2 to discuss the term "first-in-first-out (FIFO)." Other terms such as "use," "used in," and "appearing in" also should be defined in this section.

Analysis: Customs has determined not to adopt these suggestions. Although FIFO was given special attention in the proposed rule, this revision has been changed to reflect that any acceptable accounting principle may be used to show use in manufacture, shipping, etc. If Customs were to describe one method, we would have to describe all methods. Also, FIFO is not an accounting method unique to drawback.

Concerning the suggestions that the other terms be added, Customs believes it is better to define those terms in its ruling opinions on a case-by-case basis.

Comment: A reference should be added to § 191.3 relating to sugar import fees.

Analysis: Customs disagrees. The present section is not all-inclusive but includes a general listing of duties subject to drawback.

Comment: A new subsection should be added to § 191.4(a)(2) to include the holding of a Customs Service Decision allowing claimants to treat a commercial lot of imported duty-paid merchandise as domestic merchandise for purposes of substitution drawback.

Analysis: Customs disagrees because there is no provision in the revision which parallels § 22.5(a)(5), (which required records to be kept to indicate that domestic merchandise was used in manufacture). Therefore, it is unnecessary to change § 191.4(a)(2).

Comment: There should be a reference in § 191.4(a)(2) to substitution of same condition merchandise.

Analysis: Customs cannot adopt this suggestion because substitution in this context requires legislation.

Comment: There should be a reference in § 191.4(a)(2) to substitution of merchandise in foreign trade zones.

Analysis: Customs notes that substitution in a foreign trade zone is permitted only under the substitution drawback statute, not under the foreign trade zone statute. Manufacturing under substitution drawback can apply to a zone because a zone is considered in the United States. However, it is impractical to describe all interfaces between drawback and other laws in the regulations.

Comment: Drawback under 19 U.S.C. 1313(c), as discussed in § 191.4(a)(3), should be limited to those claimants who cannot claim drawback under any other drawback procedure.

Analysis: Customs does not have the statutory authority to write such a regulation.

Comment: Because of the difficulty faced in what is meant by "domestic tax-paid" alcohol in 19 U.S.C. 1313(d), it is suggested that § 191.4(a)(4) be changed to include "distilled spirits."

Analysis: "Domestic alcohol" in 19 U.S.C. 1313(d) does not include anything other than tax-paid alcohol as set forth in 27 CFR 5.22(a) and 19.597(a)(1), nor does it include beverage alcohols referred to as distilled spirits in 26 U.S.C. 5171. When the Internal Revenue Code was amended by Pub. L. 85–859, the Customs statute was not amended. Customs recognizes the problem. At this time, however, we cannot adopt the suggestion.

Comment: Sections 191.4(a) (5) and (6) should be deleted from the regulations and the law as they are obsolete provisions.

Analysis: Customs agrees that drawback on imported salt for curing fish, and the exportation of packed or smoked meats cured in the United States with imported salt are forms of drawback not currently in use. However, we believe that the statutory reference to them should be made in the regulations.

Comment: Section 191.4(a)(9) can be used to require that imported merchandise exported in the same condition must be exported under Customs supervision.

Analysis: This is incorrect. In accordance with the Pub. L. 96–609, supervision is applicable only to destruction of the imported merchandise and not to exportation.

Comment: Section 191.4(a)(10) is inaccurate because: (1) Same condition merchandise should be covered under this section; (2) there is no reference to "articles of domestic manufacture and production"; and (3) there is no reference to "drawback," "direct identification," or "substitution."

Analysis: Customs notes that when 19 U.S.C. 1313(j) was promulgated, 19 U.S.C. 1309(b) was not amended. Although this later provision covers vessel supplies which are "articles of domestic manufacture or production," a phrase which confers drawback under the manufacturing drawback provisions, section 1309(b) contains no language which would confer drawback under the same condition drawback law. Until such time as 19 U.S.C. 1309(b) is so amended, merchandise placed aboard vessels as supplies cannot be considered as having been exported for purposes of 19 U.S.C. 1313(j). Customs is amending § 191.4(a)(10) by adding a reference to "article of domestic manufacture and production." However, there is no need to refer to "drawback," "direct identification," or "substitution" as suggested because "articles of domestic manufacture or production" cover manufactured drawback articles.

Comment: Section 191.4(a)(4)(11) should be changed to include the language "merchandise upon which duties have been paid." Also, merchandise must be exported or shipped within 3 years after the date of its importation, rather than 5 years as set forth in the proposal.

Analysis: Although Customs used the term "duty paid" merchandise in § 191.4(a)(11), that section is being amended by removing that term and adding the suggested language because it does more clearly reflect the statutory language. The 5-year period as set forth in the revision is correct. The 3-year period was extended to 5-years by Pub. L. 95–410 (Oct. 3, 1978).

Comment: There should be a reference to same condition drawback in § 191.4(b).

Analysis: Customs disagrees because that section is limited to a particular type of drawback, i.e., internal revenue taxes on unmerchantable alcohol beverages.

Comment: Records should be retained for at least 3 years after "liquidation," rather than 3 years after "payment" of claims as set forth in § 191.5. Records required to be kept by manufacturers or producers also should be kept by agents or customhouse brokers.

Analysis: Customs considered amending the regulations to use the term "liquidation;" however, that proposal was rejected. Customs believes that because § 191.5 merely states the time frame for the retention of records, it would be inappropriate to expand that section to include other recordkeepers.

Comments: Proposed § 191.6(a) appears to exclude attorneys from the category of individuals authorized to sign drawback documents. The requirement that an attorney needs a power of attorney is objectionable in light of the Administrative Procedure Act, specifically 5 U.S.C. 555(b) (relating to the right of a person compelled to appear in person before an agency being entitled to be accompanied, represented, and advised by counsel); and with

regard to filing protests, conflicts with 19 CFR 174.3(a)(1).

Legal Determination 79-0131 (May 15, 1979), was criticized. The ruling related to whether an attorney in general practice who has been granted a Customs power of attorney, may sign and file forms connected with drawback or any other Customs matter for his client. The ruling held that because the attorney is not considered a "regular employee" of an importer, he cannot transact Customs business on behalf of his client unless he is licensed as a customhouse broker.

A power of attorney should be required only when the signee is not an officer or a person whom the claimant warrants to be an authorized employee of the corporation for which he is signing. One signature should be required unless additional non-related parties are involved in the transaction.

Analysis: It is Customs position that attorneys cannot bind corporations, partnerships, or sole proprietorships without a power of attorney to do so. An attorney, therefore, is required to have power of attorney to sign drawback documents. However, the commenter is correct that no power of attorney to file a protest is required of an attorney in accordance with 19 CFR 174.3(a)(1). Upon reconsideration, Customs is of the opinion that the references to protests in § 191.6(b)(12), as well as the items discussed in § 191.6(b) (10) and (11), are not technically drawback documents and, therefore, are being removed from the revision.

Customs believes that the reference to the Administrative Procedures Act is misplaced because no one is compelled to appear before Customs in order to apply for drawback. Customs has decided to reconsider Legal Determination 79-0131. Any decision on that ruling will be the subject of a separate document.

Customs cannot broaden the scope of who has authority to sign drawback documents without a power of attorney. Corporations must have on file with Customs a legal document showing that they agree to be bound in drawback matters by the signature of a particular person. Customs requires two signatures on specified Customs Forms because very often only the second party has actual knowledge of certain facts needed by Customs.

Comment: Section 191.7 should be clarified as to with whom a protest is to be filed.

Analysis: This comment has merit, and this section has been revised to reflect the procedure set forth in Part 174, Customs Regulations.

Comment: Section 191.8(b) should be modified to indicate that same condition drawback articles need not be exported under Customs supervision. There is no need to have any reference to "use" in this section.

Analysis: We believe this section, as well as § 191.4(a)(9), previously discussed, is clear as drafted. Customs supervision is applicable only to destruction of the imported merchandise. Customs believes the reference to "use," although not required here, is helpful to the reader.

Comment: Section 191.8(c) should include language that duties must have been paid on merchandise upon which drawback is sought, and that the limitation for exportation from warehouse should be 3 and not 5 years.

Analysis: It is understood that duty has been paid when drawback is sought on merchandise for any reason, or, at least, drawback would not be paid unless duty had been paid on the merchandise. The time limit for merchandise to be exported or shipped is now 5 years, as noted above.

Comment: Section 191.10(b) makes compulsory the verification of information concerning a claimant's factories located in other regions by the use of the word "shall." It is suggested the words "required by" should be changed to "provided by."

Analysis: This comment has merit. Therefore, the words "required by" are being removed, and the words "provided for in" are being added in its place. The word "shall" is being removed and the word "may" is being added in its place.

Comment: The regulations do not consider multi-plant operations with centralized control over drawback records at a home office location.

Analysis: It is Customs position the commenters concerned with their centralization of records should include this information in their contract. Generally, a verification will be limited to that location.

Comment: In proposed § 191.10(d), the postponement for payment of all the claimant's drawback pending completion of a verification and the issuance of a report by Regulatory Audit may pose severe financial hardships in the event a verification or issuance of a report was delayed. Suggestions were made to establish a maximum period of postponement for liquidations from the initiated date of postponement. The suggested period was from 60-90 days from the date of postponement. Others suggested the postponement should apply only to those claims under the same contract subject to verification.

Analysis: These comments have merit. The regulation is being revised to provide for postponement of payment on only those claims selected for verification. However, specifying a maximum period of postponement is considered too restrictive. In the event a substantial error is revealed during the verification, Customs may postpone liquidation of all related product line claims, or in its discretion, all claims.

Comment: The use of the phrase "within a specified time" in proposed § 191.10(e) should be changed to show the claimant has a fixed specific time to amend defective drawback contracts. It is suggested that 90 days is appropriate.

Analysis: It is Customs opinion that use of a specified time would be restrictive, both to Customs and the claimants. Contract deficiencies must be corrected timely. Required changes to contracts will vary in complexity. These matters are best resolved between the responsible Customs Service official and the claimant. The suggestion is not adopted.

Comment: The question was raised whether the claimant still has the right to file a protest.

Analysis: This is correct.

Comment: Section 191.11(a) should be amended to exempt Government instrumentalities operating with nonappropriated funds from the requirement of obtaining bonds relating to drawback claims.

Analysis: Customs believes that although these instrumentalities are required to obtain bonds, Customs has determined to waive the surety requirements on accelerated bonds and exporter's summary procedure bonds. This section is being amended accordingly.

Comments: Section 191.11(c)(2) is limited to drawback being available only to a supplier; however, if the supplier of the merchandise is the manufacturer, producer, etc., he has the right under § 191.73(b) to endorse the drawback to anyone he chooses.

Analysis: This comment has merit and, therefore, § 191.11(c)(2) is being amended by adding "or any of the parties specified in § 191.73(b) of this part" after the word "supplier."

Comment: The section heading of § 191.13 "Guantanamo Bay" is insufficient to reflect the information contained therein which also refers to payments or nonpayments of drawback on merchandise shipped to insular possessions or trust territories.

Analysis: The comment has merit and the section heading is being changed to read:

"Guantanamo Bay, insular possessions, trust territories."

Subpart B

Comment: Section 191.21(a) should be clarified to distinguish sufficiently between a specific drawback contract and a general drawback contract.

Analysis: This comment has merit. The first sentence of this section is being revised by adding at the beginning, "Unless operating under a general drawback contract * * *.

Customs desires claimants to use the least complex procedure. General contracts reduce the burden on both Customs and the public. A claimant should not use both a general and a specific drawback contract.

Comment: Section 191.21(a)(1) may be confusing when read with § 191.22(d) in that it may be believed that brokers or issuers of certificates of delivery may be required to file drawback proposals.

Analysis: Customs disagrees. Section 191.21 makes it clear that only manufacturers and producers of articles need drawback contracts. There is no requirement for a broker to have a drawback contract.

Comment: Persons keeping complementary records pursuant to § 191.21(a)(1) should be able to sign those records.

Analysis: Customs agrees. Because complementary records are kept by the person for whose account the products are manufactured or produced when the manufacturer or producer is unable to do so, the following sentence is being added at the end of that section:

Complementary records may be signed by the complementary recordkeeper in accordance with § 191.6(a) of this part.

Comment: Language should be added to Subpart B to the effect that claimants need only keep "reasonable records" to show compliance with the law, and that drawback should ensue unless "contrary information" is found in the claimant's records.

Analysis: Customs disagrees. The claimant's records must show compliance with the requirements of the law and regulations. Customs cannot permit a lessening of this burden. Adoption of the suggestion would place the burden on Customs in those cases where the claimant's records indicate a lack of compliance.

Comment: Section 191.21(a)(2) should be amended so as not to require subcontractors to submit contracts, general or otherwise.

Analysis: This section has been amended to clarify that subcontractors may use a general contract which requires a minimum of work on their part.

Comment: Section 191.21(a)(2) should be clarified to indicate that it is drawback merchandise which must be identified.

Analysis: Customs disagrees. The terms "material" indicates that it is the merchandise which must be identified, which possibly may not be the drawback merchandise after handling by the subcontractor. This regulation applies only to identification.

Comment: Section 191.22 should be revised to avoid confusion between recordkeeping requirements for 19 U.S.C. 1313(a) and 19 U.S.C. 1313(b).

Analysis: Section 191.22(a) indicates that that section concerns direct identification drawback and that substitution drawback recordkeeping requirements are found in § 191.32.

Comment: The Following language should be added at the end § 191.22(a)(4) "* * * unless the claimant has selected to utilize the schedule method in their proposal to Customs."

Analysis: Customs disagrees. A schedule merely indicates the amount of merchandise used in manufacture during the period. Use of a schedule does not obviate the necessity of filing manufacturing abstracts, which show compliance with the time frames for receipt, use in manufacture, and exportation.

Comment: In § 191.22(a)(5)(i), the values of each product at the time of separation should be taken into consideration only if they are over a specific percentage, e.g., 5 percent in relation to each other.

Analysis: Customs cannot adopt this suggestion because the present language provides us with the flexibility needed to determine when a value is *de minimis* with regard to the values of its relative products.

Comment: The 1-month abstract period specified in § 191.22(a)(5)(ii) is too short and should be for several months. The drawback contract rather than the regulation should provide the abstract period.

Analysis: Customs does not agree. A 1-month limitation provides a safeguard against a claimant receiving more drawback than entitled. Furthermore, the regulation does provide for approval by Customs of a longer manufacturing abstract period. Also, having a limitation on the abstract period leads to uniformity for liquidators and auditors.

Comment: The reference to "weighted average" in § 191.22(a)(5)(ii) should be deleted because it does not recognize market fluctuations during the abstract period.

Analysis: Customs disagrees because it is precisely the market values over a manufacturing period which are used to determine a weighted average for by-products.

Comment: In § 191.22(a)(5)(ii), each manufacturing period should be considered the time of separation, rather than the entire time period covered by the claim, with the weighted average market value assigned for each period.

Analysis: Customs cannot adopt this suggestion. If a claim is made for goods manufactured over more than one abstract period, then unit relative values based on the entire manufacturing period must be ascertained.

Comment: The term "designated" in § 191.22(b) is misleading.

Analysis: Customs agrees and has removed this word.

Comment: Identification of two or more lots of merchandise used for drawback purposes in § 191.22(c) should not be limited to first-in-first-out (FIFO) accounting principles.

The word "shall" in the first sentence should be changed to "may". The phrase "or any other accounting procedure approved by Customs" should be added at the end of the first sentence to permit use of other accounting procedures.

Analysis: Customs believes this comment has merit and is so revising this section. Therefore, other accounting procedures such as "low-to-high," "identification," and "blanket identification" may be used.

Comment: Drawback claimants should not have to account for domestic consumption since in doing so, they may lose drawback.

Analysis: Customs has held, in effect, that if a claimant is using FIFO or any acceptable accounting method for such commingled goods, the claimant need not account for domestic consumption. Accordingly, there is no need to add this to the regulations.

Comment: Section 191.22 should apply only to 19 U.S.C. 1313(a) drawback and a separate section should apply to substitution drawback under 19 U.S.C. 1313(b).

Analysis: Customs believes that the appropriate sections are clear. Section 191.22(a) provides the record requirements for direct identification and other non-substitution manufacturing drawback and refers the reader to § 191.32 for record requirements 19 U.S.C. 1313(b). The last sentence of § 191.22(c) is being deleted (as discussed below). Section 191.31 advises that the procedures set forth in subparts A and B are applicable to 19 U.S.C. 1313(b) except as noted in subpart C.

Comment: Sections 191.22 (b) and (c) should be amended to cover single lot and multiple lot identification.

Analysis: Customs disagrees because single lots need no further identification.

Comment: The last sentence of § 191.22(c) is misleading in that it is claimed that FIFO must be used to designate merchandise for drawback under 19 U.S.C. 1313(b).

Analysis: To clarify this, Customs is removing the last sentence of this section and adding a new § 191.32(e) to read as follows:

(e) Designation

A manufacturer or producer may designate any merchandise which it has used in manufacturing or production.

Comment: The first sentence of § 191.25(b)(2) should be revised by removing the language through "Customs Headquarters" and adding in its place "a letter modifying an existing contract." There should be additions to the list of changes covered by the modification which can be approved by the regional commissioner.

Analysis: Customs disagrees. To change the first sentence would remove from the regulations the types of contracts which can be approved by the regions, which otherwise requires Headquarters approval. Customs believes that there should be no expansion of the list of changes covered by the modification.

Comment: One commenter asks whether § 191.25(b)(2) allows a regional commissioner to revoke a contract approved by Headquarters.

Analysis: Section 191.25(b)(2) delineates the instances when approval of specified modifications are submitted to the regions. When they are received by the regions and approved, the region notifies Headquarters and the modified contract becomes effective. If the existing contract was approved at Headquarters, this is no impediment to the region's action. The contract is not revoked by this action.

Comment: Section 191.25(c) should be amended by adding "without prejudice" at the end of the sentence.

Analysis: Customs agrees and has added * * * "without prejudice to claims existing thereunder" at the end of the sentence.

Comment: The phrase * * * "in accordance with § 191.23 of this part" * * * should be removed from the first sentence of § 191.26.

Analysis: Customs disagrees. The cross-reference is used to inform the party renewing the contract which Customs office should be notified of the request.

Comment: Section 191.26 should provide a time limit to indicate when Customs should be notified on an intent to renew the contract.

Analysis: Customs believes that a specific time period is unnecessary. Customs will accept a request to renew a contract at any time prior to the expiration of the 15-year period.

Comment: A question was raised whether only Headquarters can renew a contract approved by Headquarters.

Analysis: Customs notes that under present guidelines, if Headquarters approves the original contract, then it approves the renewal.

Subpart C

Comment: It appears from the language of § 191.32(a)(1) that claimants under 19 U.S.C. 1313(b) can continue to designate the imported merchandise most advantageous to them.

Analysis: This is correct. It is believed that if a claimant under 19 U.S.C. 1313(b) uses FIFO (or any other approved method) for identifying or proving use of merchandise in manufacture, then that claimant must use that method for designating merchandise for drawback. This is not so. As noted above, we have amended § 191.22(c) and added § 191.32(e), for clarification.

Comment: Section 191.32(a) should include a reference to rulings holding that merchandise not proved to be imported is considered domestic merchandise.

Analysis: This is not necessary since there is no reference to the use of domestic merchandise in § 191.32(a).

Comment: Section 191.32(a)(2) does not sufficiently distinguish between "used" and "appearing in" methods.

Analysis: This comment has merit. The word "or" is being added to this section immediately before the word "appearing."

Comment: Because § 191.31 refers to Subparts A and B, the question is raised whether is it necessary to include a paragraph on valuable waste in § 191.32(b) in light of paragraph 191.22(a)(2) on this subject matter.

Analysis: Customs believes both sections are necessary. "Valuable waste" is discussed in § 191.22(a)(2) and "valuable waste records" are discussed in § 191.32.

Comment: The exchange of petroleum provision in § 191.32(c) should be extended to all fungible goods.

Analysis: Legislation would be necessary to accomplish this.

Comment: The language in the second sentence of § 191.33 after "separation of the products * * * " should be deleted.

Analysis: Customs disagree. That information is needed to prepare claims.

Comment: The relative values in § 191.33 should be ignored if the difference in value between by-products is small (e.g., 5 percent).

Analysis: The present language give Customs flexibility in determining when a value is *de mininus* with regard to the values of its relative products. Customs believes that adoption of the suggestion would complicate the administration of the relative value aspects of the law.

Comment: Objections were raised regarding the one-month time limitation and the use of the term "weighted" in § 191.33.

Analysis: Customs believes the sections should not be changed for the reasons previously discussed.

Comment: Section 191.34 should be amended to allow the general agents' drawback contract under 19 U.S.C. 1313(b) extended to claimants using agents under 19 U.S.C. 1313(a).

Analysis: There is no necessity for an agent's drawback contract under 19 U.S.C. 1313(a). Under 19 U.S.C. 1313(a), because only the imported merchandise is being subjected to manufacture, it would be surplusage for a principal to operate under the general drawback contract of 19 U.S.C. 1313(a) and have his agent obtain an agent's contract. Under 19 U.S.C. 1313(a), the agent need only operate under a general drawback contract.

Subpart D

Comment: The language of Subpart D does not sufficiently reflect contract terminology involving offer and acceptance.

Analysis: This comment has merit. Clarifying changes have been made to § 191.42 and 191.43.

Comment: Subpart D should provide a listing of approved general drawback contracts available to the public.

Analysis: Customs publishes as Treasury Decisions general drawback contracts when they are offered. However, to include a listing of these contracts in the regulations would require continuous amendment of the regulations as new contracts are published. Customs believes this is unnecessary.

Comment: Section 191.42(b), which provides specified information that must be provided by a manufacturer or producer to Customs under a general drawback contract, should be expanded to include:

(1) Imported merchandise to be used;
(2) Exported product;
(3) Basis of claim; and
(4) Designated merchandise.

Analysis: Customs disagrees because inclusion of this additional data is not

necessary and submission would pose a burden on the claimant.

Comment: A regional commissioner should acknowledge within 60 days, receipt of a letter of acceptance by the manufacturer or producer of an offer for a general drawback contract in § 191.43.

Analysis: Acknowledgement by the regional commissioner is a matter of courtesy and ordinarily will be done within a reasonable time-frame. Customs believes a 60 day requirement is unnecessary.

Comment: The reference in § 191.44 to renewal of a contract by the regional commissioner "upon satisfactory review" should be removed because that phrase is too ambiguous and subjective, and the regional commissioners should not be required to conduct any review.

Analysis: Customs agrees. The phrase "Upon satisfactory review" may be confusing and is unnecessary. Therefore, the entire second sentence is being removed.

Subpart E

Comment: Customs should retain the certified notice of exportation procedure. Eliminating this procedure effectively will deny claimants drawback. When the claimant is not the direct exporter, the claimant often is unable to obtain the necessary documentary evidence of exportation from the exporter. The exporter may refuse to provide the data to the claimant because of business confidentiality or bear the administrative expense of providing supporting documents. The claimant must expend more money to obtain the document required for the uncertified procedure. The proposed revision is discriminatory in those situations when the claimant is not the direct exporter because proof of exportation may be available only by means of the certified notice of exportation. Customs refusal to expend time and effort required to certify the notice of exportation *after* exportation has occured is understood. However, it is noted that only a minimal amount of effort is required to perform the certification when the manifest, shipper's export declarations, and notices of exportation are all submitted properly *at the time* of exportation.

Analysis: Customs believes these comments have merit and has determined to retain the certified notice of exportation procedure in the following two circumstances:

1. Certification of notice of exportation at the time of exportation, and

2. Certification of notice of exportation by mail.

To accomplish this, the word "Uncertified" is being removed from § 191.51(a) and the section heading of § 191.52. Section 191.52(c) has been rewritten and divided into two paragraphs, (c)(1) and (c)(2). Paragraph (c)(1) permits the certified notice of exportation procedure and paragraph (c)(2) provides the uncertified notice of exportation procedure.

Comment: Section 191.52(b)(3) should be revised by removing the word "gross" and require only "net weight";

Analysis: Customs disagrees. For regulatory audit purposes, gross weight needs to be specified.

Comment: The reference in § 191.52(c) (now § 191.52(c)(2) as rewritten), to "or certified copies thereof" should be removed in order to conform to C.S.D. 82–59 (Vol. 16, No. 16, Cus. Bul. p. 33).

Analysis: Customs disagrees. That ruling merely stated that copies of bills of lading, etc., which indicate that the goods were received by the exporting carrier, would be sufficient to support a notice of exportation. This is the "certification" to which § 191.52(c) refers.

Comment: A "domestic" bill of lading covering a motor carrier shipment to a Mexican border point should be an acceptable document to support an uncertified notice of exportation. A so-called "domestic" bill of lading to a Mexican or Canadian customer should be deemed acceptable.

Analysis: Customs disagrees. Intermodal and inland bills of lading are not acceptable as proof of exportation as set forth in C.S.D. 82–59.

Comment: The numbering provision of § 191.52(d) should be eliminated.

Analysis: Customs disagrees and believes the numbering is necessary for identification purposes.

Comment: The reference to same condition drawback in § 191.53(b) should be removed.

Analysis: Customs disagrees because Subpart E is concerned with methods of proving exportation for manufacturing and same condition drawback.

Comment: The word "may" in § 191.53(c) should be removed and the word "shall" added in its place.

Analysis: Customs agrees. The regional commissioners should grant summary procedure when it is concluded that its use would contribute to administrative efficiency.

Comment: Section 191.53(d) should be deleted because no bond is needed for operation under the exporter's summary when a claimant has obtained a bond to file drawback claims under the accelerated payment procedure.

Analysis: Both bonds are necessary as they cover different aspects of drawback. Furthermore, many drawback claimants operating under summary procedure do not operate under the accelerated procedure.

Comment: The reference in § 191.53(e)(1) to "identity and location of the ultimate consignee of the exported articles" should be removed because collection of this data is a burden.

Analysis: Customs notes that the requirement to submit this data is contained in existing § 22.7(d)(2)(ii) and is still needed.

Comment: The reference in the second sentence of § 191.53(e)(2) to same condition drawback should be removed because the subject is covered by Subpart N.

Analysis: Customs disagrees because this section deals with exporter's summary procedure, and we want to make it clear that this procedure can be used with same condition drawback as well as with manufacturing drawback.

Comment: The reference in § 191.53(e)(3) to a "chronological summary" should be removed because the requirement causes needless, excessive paperwork with no apparent benefit to claimants or Customs.

Analysis: The chronological order is necessary so that the timeliness of exportation can be determined after a rapid review by the liquidator. Otherwise, it would be easy to overlook the oldest export date.

Comment: Some of the items on the format in § 191.53(e)(3) are claimed to be unnecessary. It is suggested the phrases "Marks & Nos.", "Schedule B No.," and "Destination" be removed. The submission of all the data should not be mandatory. One commentor suggests rewording or redesigning the chronological summary because of the extensive current use of data processing and the cost of programing.

Analysis: This comment has some merit. Customs has determined to revise the language of § 191.53(e)(3) to provide that the format shall be acceptable to the regional commissioner and shall contain "substantially the data provided for in the following sample format."

Comment: The last sentence of § 191.54(c) should be removed because it places a burden on the postmaster.

Analysis: This suggestion is not adopted because Customs and the claimant want to know where a copy of the notice of exportation will be available if the exporter/claimant loses his copy. Second, the exporter or his agent, to whom the postmaster gives the original notice of exportation and one copy, may not be the drawback claimant.

Comment: Section 191.54(c) "Certification" should be redesignated as § 191.54(a)(2) and proposed § 191.54(a), "Procedure," should be redesignated as § 191.54(a)(1).

Analysis: Customs agrees and has so changed the revision.

Comment: Section 191.55(b) should be amended to conform to the change made to § 191.11(c)(2) relating to other parties for whom drawback is available.

Analysis: This suggestion is adopted.

Comment: Section 191.55(b) should permit the applicable parties to use the exporter's summary procedure.

Analysis: Customs agrees and is adding a reference to § 191.53 at the end of the sentence.

Comment: Section 191.57, relating to examination of merchandise, should be removed because the language is too broad.

Analysis: Customs disagrees. It is necessary to inform drawback claimants of Customs right to examine any merchandise to be exported with drawback.

Subpart F

Comment: The phrase in § 191.61, "including those issued by one Customs officer to another," should be removed. It was unclear as to what documents are being referred to.

Analysis: Customs disagrees. The documents refer to the notice of exportation.

Comment: Section 191.62(a)(1) should be amended to allow claimants to file documents with "any" district director, rather than "the appropriate" district director.

Analysis: Customs disagrees. Claims should be filed with a district director under the jurisdiction of the regional commissioner where the drawback contract is filed. Each claim will be liquidated at that location unless the claimant requests the regional commissioner who has the contract on file to transfer the contract to another location where claimant indicates the claim is to be liquidated.

Comment: After "Customs Form 7575" in § 191.62(a), add "–A, if claiming under 19 U.S.C. 1313(a), or Customs Form 7575–B if claiming under 19 U.S.C. 1313(b)."

Analysis: Customs agrees; this addition would distinguish between and cover (a) and (b) claims.

Comment: The reference in § 191.62(b)(2), as well as in § 191.52(a), to uncertified Customs Form 7511 should not be required if documentary evidence supports exportation.

Analysis: Customs disagrees because Customs Form 7511 is a signed representation to Customs that exportation occurred. The evidence of exportation used to support the Customs Form 7511 (e.g., bill of lading), concerns parties other than Customs certifying receipt and exportation. The Customs Form 7511 is a document which can be the basis of criminal action under 18 U.S.C. 1001 and 18 U.S.C. 550.

Comment: The examples should be removed from § 191.62 (c)(1) and (c)(2).

Analysis: Customs disagrees. In this instance, the examples are beneficial.

Comment: Section 191.65(a), referring to when certificates of delivery are required, should specifically set out that these certificates are to be used to record transfers of same condition drawback merchandise.

Analysis: Although § 191.145 (redesignated as § 191.141(e)), provides that the provisions relating to direct identification drawback apply to same condition drawback when not inconsistent, we believe this comment has merit. Therefore, in the last sentence of that section, a specific cross-reference to § 191.65 is being added.

Comment: Section 191.66 should emphasize the fact that the principal needs to submit only a certificate of manufacture or certificate of manufacture and delivery when the principal uses agents to accomplish some or all of the manufacturing process.

Analysis: Section 191.66(b) is being revised by adding a provision that in certain circumstances, Customs will waive the requirement for an agent to file certificates of manufacture and delivery.

Comment: The words "prepared and executed by the importer" should be added after "Customs Form 7543" in § 191.65(a). Also, the words "prepared and executed by the manufacturer" should be added after "Customs Form 7577" in § 191.66(a).

Analysis: Customs disagrees. Both forms are self-explanatory concerning how they should be completed.

Comment: In § 191.66(f)(1), the "–B" after "Customs Form 7577" should be deleted.

Analysis: Customs agrees and is making the change.

Comment: A question was raised whether the phrase "evidence of clearance" means the same as "evidence of exportation."

Analysis: The meanings are the same. Customs believes the new reference to "clearance" is a better choice of words.

Subpart G

Comment: Courtesy notices should be issued for all drawback liquidations. Bulletin notices should be coded to differentiate between payments of accelerated drawback and final liquidation.

Analysis: Courtesy notices are generated from the Customs Headquarters Data Center and are issued at the time of each drawback liquidation. However, the courtesy notice is not generated for accelerated payments. Section 159.9(d), Customs Regulations, states that Customs will endeavor to provide importers or their agents with a courtesy notice. We include drawback claimants who have liquidated claims because notices are generated for all liquidations. However, because accelerated payments are not liquidations, these payments are not posted as bulletin notices.

Comment: There should be a provision added to § 191.71 to cover a situation when the drawback liquidator is unable to secure the import entry. It is suggested that if Customs is unable to secure import entries necessary for liquidations within 6 months after the claim is filed, the claimant has the right to reconstruct the entry.

Analysis: In such instances, reconstruction of the import entry by the importer or claimant would be the basis for liquidation in accordance with § 191.71. However, this matter is better discussed in a manual supplement to Customs officers rather than in the regulations.

Comment: In § 191.71(d), there should be a cross-reference in § 159.1 wherein the term "liquidation" is defined.

Analysis: Customs believes that this cross-reference is unnecessary.

Comment: The heading and language of § 191.71(e)(1) are confusing and should be clarified.

Analysis: This comment has merit. The section heading is being changed to read "Distribution and value for multiple products." In § 191.71(e)(1), the phrase "manipulation of imported" is being removed and the phrase "manufacture or production of" is being added in its place.

Although 19 U.S.C. 1313(a) refers to "manipulation," this term may be confusing. Under the statute, a manufacture or production must occur. Because the exported articles may be manufactured with imported or domestic merchandise or a combination thereof, unless the word " imported" is deleted, claimants may feel relative values do not apply when domestic merchandise is used to produce the exported articles.

Comment: Similar suggestions for clarification were made concerning § 191.71(e)(2). Additionally, there should be a reference in § 191.71(e)(2) to 19 U.S.C. 1313(b).

Analysis: This comment has merit. The suggestion relating to 19 U.S.C. 1313(b) is being adopted by removing the reference to 19 U.S.C. 1313(a). Therefore, § 191.71(e)(2) is being amended to read:

(2) *Value.* The values to be used in computing the distribution of drawback where two or more products result from the manufacture or production of merchandise under drawback conditions shall be the market value unless another value is approved by Customs.

Comment: Section 191.72(b) should be clarified to indicate that when unliquidated accelerated drawback amounts in claims filed (rather than actual claims as proposed), exceed the estimated amount of accelerated drawback to be received over the bond period, the regional commissioner is to demand additional coverage.

Analysis: Customs agrees.Therefore, in the last sentence of this section, the word "actual" is being removed and the words "outstanding unliquidated" are added in its place. This will emphasize that only unliquidated entries can be charged against the estimated total accelerated drawback during the bond period when the regional commissioner must decide whether to demand additional coverage.

Comment: The language should be changed in § 191.72(d) so that regional commissioners shall deny the privilege to receive accelerated drawback to those claimants who "consistently" file claims in excess of the amount due.

Analysis: Customs disagrees. The operative word currently in that section is "repeatedly." "Consistently" would require a finding by the regional commissioner that the claimant uniformly and always files overclaims. "Repeatedly" implies a frequency of overclaims to the point that the revenue is threatened, but does not require constant and uniform filings of overclaims.

Comment: The language of § 191.72(d) should be changed in part to read "accelerated payment will be denied to claimants who are repeatedly delinquent in remitting excess payments received."

Analysis: To do so would allow claimants repeatedly to file over-claims and retain the privilege of accelerated drawback as long as the overpayments they receive are promptly returned to the Government. Thus, they would be getting interest free loans. Additionally, the words "the right to receive" appear to be misleading and are being removed.

Comment: Section 191.73(a) should provide that an importer may reserve the right to drawback.

Analysis: Customs believes that the section should not be changed. However, it is noted that drawback may be assigned to an importer under § 191.73(b).

Comment: The phrase in § 191.73(a) "at the time of sale or consignment of the articles" should be removed.

Analysis: Customs agrees. Reservation of the right to drawback may be made at a time other than at the time of sale or consignment. Therefore, the phrase is being deleted.

Comment: An example (such as "The undersigned hereby authorizes, etc. (claimant) to receive drawback * * *") should be included in 191.73(b).

Analysis: Customs believes that an example is not necessary in this case.

Subpart H

No Comments.

Subpart I

Comment: Section 191.93(e)(1) should be amended to include those activities which confer eligibility for drawback on supplies laden aboard vessels.

Analysis: Customs disagrees because the activities are included on Customs Form 7514.

Comment: Because of the multitude of ladings of fuel on foreign-bound aircraft by single suppliers who now must list each aircraft or vessel on the reverse of Customs Form 7514, § 191.93(j)(2) should be amended to provide the composite notice required by this section to list only the total amount of fuel laden during a calendar month.

Analysis: Customs is unable to adopt this suggestion. Each form must be signed by the owner or operator of the vessel or aircraft who has "knowledge of the facts" that the fuel was laden and is to be used in foreign travel, as provided in § 191.93(j)(3). Owners and operators would be unable to complete the "Declaration of Master or other Officer" as required on this form if the form covers fuel ladings on many aircraft or vessels which: (1) Are not listed on the form and (2) are not owned by the person or agent completing the form. The person supplying the fuel in most instances involving aircraft is not the owner or operator of the aircraft.

Subpart J

No comments.

Subpart K

Comment: Section 191.113(a), does not conform to the language of 19 U.S.C. 1313(g), in discussing the materials which are eligible for drawback under that provision.

Analysis: The language after the phrase "and not" is to conform to rulings which have held that "repair" of a vessel was not the "construction" thereof, and that certain furnishings, luxury items and the like, not a part of the vessel nor necessary by law or regulation for the safe operation of the vessel, cannot be the subject of drawback.

Customs rulings follow the intent of Congress. If an article is not attached to, or made a part of, a vessel or is merely placed aboard the vessel and not required for safe operation of the vessel or safety of the crew, Congress did not intend that it be the subject of drawback.

Subpart L

No comments.

Subpart M

Comment: Section 191.131(a) should be amended to include foreign trade zones.

Analysis: Customs disagrees because merchandise in a foreign trade zone is not the type of Customs custody to which this section relates.

Comment: The proposed reduction of the period of time in which to file a bill of lading in § 191.136(a) from 2 years to 6 months is too short. This limitation could cause problems, and therefore it is suggested that a provision be added to permit an extension. Under paragraph (d), it is suggested that the definition of "bill of lading" be included in this section.

Analysis: Under § 191.136(a), Customs agrees that a longer period of time is needed. Therefore the "6 months" will be changed to read "2 years." With this change, no extension should be needed and an extension would not be granted. C.S.D. 82–59 describes in detail the three principal types of bills of lading and their use. Therefore, no addition to paragraph (d) is needed.

Subpart N

General Statement

Customs received considerable comments objecting to the proposed regulations on same condition drawback. Commenters' objections related to provisions on the operational time frames, examination of the merchandise, and legal issues. It is claimed that the proposal makes it almost impossible to claim drawback.

Comment: The title of Subpart N, "Same Condition Drawback" is misleading because that subpart also discusses rejected merchandise under 19 U.S.C. 1313(c).

Analysis: Customs agrees and has revised the title of Subpart N to read "Same Condition and Rejected

Merchandise Drawback." The section numbers under Subpart N have been redesignated to conform to this change.

Comment: Section 191.141(a) (redesignated as § 191.141(a)(1)) should be rewritten to emphasize that imported merchandise destroyed under Customs supervision need not be in the same condition.

Analysis: Customs believes the legislative history is clear that when destroyed, the merchandise must be in the same condition as when imported. This is clear from the intent of law. If it were not so, anyone could import an article, allow it to deteriorate, and then receive drawback. The same importer could put the article to its intended use which is prohibited by the statute (see C.S.D. 81-222 of May 27, 1981, Vol. 15, Cus. Bul. p. 1171) and then claim the article had merely deteriorated and not used prior to destruction.

Comment: Subpart N should provide that certificates of delivery are acceptable for same condition drawback.

Analysis: Customs has so stated this in rulings, and Subpart N specifically states that where applicable, the provisions for manufacturing drawback apply to same condition drawback. Moreover, § 191.142(a), (redesignated as section 191.141(b)(1)), states transfers will be documented by certificate of delivery.

Comment: Subpart N should incorporate a definition of "same condition," in addition to "use." Operations, which do not constitute a use should leave the article in its same condition. This commenter also asked if all processes not amounting to a process of manufacture leave an article in its same condition.

Analysis: "Use" is defined in § 191.141(c), (redesignated as § 191.141(a)(3)). However, questions relating to "same condition" are more properly the subject of Customs rulings rather than the regulations.

Comment: Section 191.142(a), (redesignated as § 191.141(b)(1)), should be changed to permit the same condition claim to be filed with any Customs officer at the port of exportation rather than with "any district director."

Analysis: This comment has merit. Therefore, this section is being amended by removing "with any district director" in the first sentence and adding in its place, * * * "with the regional commissioner, or the district (area) director, or port director, if authority has been delegated to that official by the regional commissioner."

Comment: Section 191.142(a), (redesignated as § 191.141(b)(1)), should be amended by removing the word "certify" in the third sentence, and adding the word "state" in its place.

Analysis: Customs disagrees. The claimant is required to certify by signature on an affidavit attesting to the condition of the merchandise to be exported.

Comment: The last sentence of § 191.142(a), (redesignated as § 191.141(b)(1)), should be changed to "* * * Transfer when the claimant is not the importer shall be documented by the use of certificates of delivery attached to Customs Form 7539."

Analysis: Customs disagrees. The proposed sentence is satisfactory.

Comment: Other comments on § 191.142 included:

There is no intent in the same condition drawback statute that prior notice of exportation and examination of same condition merchandise are required to obtain the benefits of that law. Prior notice and filing requirements will limit, or may eliminate, potential same condition drawback claimants. Although exporter's summary procedure obviates prior notice of exportation, many claimants may not qualify for this procedure. Filing documents prior to exportation is unrealistic and was not contemplated by the law. Prior notice and examination for same condition drawback is too stringent a procedure. There should be no prior notice of same condition drawback.

The 12-working day filing period in § 191.142(b), (redesignated as § 191.141(b)(2)), is too long and should be shortened to 5 days or 3 days. District directors should have authority to give a blanket waiver of the prior notice requirement. It is suggested that after a certain period of time, a claimant, operating under the summary procedure or generally under the same condition drawback regulations, and who has made a certain number of claims without incident, should be relieved of the requirement of prior notice.

Commenters stated that no exmination of any kind, as discussed in § 191.142 (c)(1) and (c)(2), (redesignated as § 191.141 (b)(3)(i) and (b)(3)(ii)), should be required as this was never contemplated by the statute. Subsection (b)(3)(ii) should be completely removed and the following added in its place: "The Customs officer at the port of export may examine any merchandise to be exported with drawback." Examination for same condition drawback as drafted is too stringent.

Alternatives to the examination requirement were suggested. The 10 days afforded the district director to inform the claimant whether examination would be required should be shortened to 3 days or less. The district director should be given the authority to give a blanket waiver of examination to claimants.

If examination is required, it should be conducted with the same frequency as the immediate delivery examinations with imported merchandise (i.e. not more than 10 percent examination, with such examination to be evenly and randomly accomplished). Section 191.142(c)(2) (redesignated as § 191.141(b)(3)(ii)) and 191.142(b), (redesignated as §§ 191.141(b)(2)), should be amended to read: "Filed with the Customs officer at the port of examination not later than the date of exportation and not sooner than 12 working days prior to exportation."

Analysis: Although the phrases "prior notice" or "prior filing" and the word "examination" are not statutory, Customs believes that some steps are necessary to avoid revenue losses, and there should be some method to handle the many contemplated exportations. Customs agrees that its operational guidelines and the proposed regulations proved to be too restrictive, although Customs has the authority to promulgate such "rules and regulations" under 19 U.S.C. 1313(k).

Customs has determined that regional commissioners (or their delegates) should be given authority to grant blanket waivers of the prior notice requirement. Of course, the prior notice waiver notwithstanding, Customs has the right to examine any merchandise prior to exportation. Claimants who do not qualify for exporter's summary procedure, or who do not wish to use the procedure, should be allowed to export merchandise under same condition drawback without prior notice under certain circumstances.

Therefore, Customs is revising proposed section 191.142(b), (redesignated as § 191.141(b)(2)) by further subdividing this redesignated section into paragraphs 191.141 (b)(2)(i) and (b)(2)(ii) to provide for:

1. Filing of Customs Form 7539 at least 5 working days prior to the date of intended exportation unless Customs approves a shorter period; and

2. Waiving of prior notice by the appropriate Customs officer in his discretion at any time, or mandatory waiving if the exporter/claimant files 6 consecutive claims free of substantial error, provided further that such exporter/claimant has operated under the same condition program a minimum of 6 months.

Customs also is revising the language of proposed § 191.142 (c)(1) and (c)(2).

(redesignated § 191.141 (b)(3)(i) and (b)(3)(ii)), by:

1. Changing the proposed 10 working day notice requirements to 3 working days; and

2. Changing the proposed 10 working day examination requirement to 5 working days.

Furthermore, Customs is:

3. Adding a new § 191.141(b)(3)(iii) relating to examination procedures to be used by Customs; and

4. Removing proposed § 191.142 (d)(1) and (d)(2).

Comment: Section 191.143 should be amended to allow 3 years after exportation for filing and completing the same condition drawback claims.

Analysis: This comment has merit, and Customs is so revising proposed § 191.143 (redesignated as § 191.41(c)).

Comment: Section 191.44 also should be amended to allow 3 years after exportation for filing and completing the same conditon drawback claims.

Analysis: Customs also is revising § 191.144 (redesignated as § 191.141(d)) to accomplish this. Furthermore, the reference in the second sentence of redesignated § 191.141(d) to Customs Form 7539 is being removed because a completed entry includes more than this form.

Comment: Section 191.146(a) should be clarified as to the destruction of the merchandise under same condition drawback.

Analysis: This comment has merit. This section (redesignated as § 191.141(f)(1)) is being so revised.

Comment: The requirement in § 191.146(a) that claimants certify the merchandise is in the same condition and was not used prior to destruction is not consistent with the law. It is claimed that there is no requirement that the merchandise be in the same condition at the time of destruction.

Analysis: The statutory language and the legislative history make it clear that if a claimant uses destruction in place of exportation to claim same condition drawback, in order to do so, at the time of destruction, the merchandise must be in the same condition as when imported. If there were no such requirement, anyone could import an article, change its condition by any method, then destroy the article and claim drawback. Certifying that the merchandise is in the same condition at the time of destruction is no different than such certification on the Customs Form 7539 prior to exportation. We require such certification so that if and when examination is waived, or if a claimant is given a waiver of prior notice, he will be not likely to run afoul of 18 U.S.C. 550 or 18 U.S.C. 1001 by filing a false affidavit. Requiring such certification is permitted by 19 U.S.C. 1313(k).

Comment: In § 191.147, accelerated drawback should apply to same condition drawback.

Analysis: This is correct and is in accordance with T.D. 81-242, dated September 4, 1981. Further, Subpart N states in 191.145, (redesignated as § 191.141(e)), that the provisions relating to direct identification drawback shall apply to claims for drawback under same condition, provided the provisions do not conflict. Nevertheless, because § 191.72(a) refers only to Subpart F, that section is being revised by adding a cross-reference to Subpart N.

Comment: Section 191.147(a) should be amended to provide that drawback claims should be liquidated within 60 days rather than "as determined by the regional commissioner."

Analysis: Section 209 of Pub. L. 95-410 added a new section 504 to the Tariff Act of 1930 (19 U.S.C. 1504), setting forth time frames for the liquidation of entries, or withdrawals of merchandise for consumption. However, this section does not apply to the liquidation of drawback entries. Customs believes no time limit should be imposed.

Comment: The regulations should provide that if a drawback liquidator determines that a drawback claim is incomplete, he must notify the drawback claimant and afford the claimant an opportunity to substantiate the validity of the claim before it is liquidated.

Analysis: Customs believes this suggestion has merit. Therefore proposed § 191.147 (redesignated as § 191.141(g)) is being revised by:

(1) Redesignating proposed paragraph (a) as paragraph (1);

(2) Adding a new paragraph (2) to incorporate the substance of the commenter's suggestion; and

(3) Redesignate proposed paragraph (b) as paragraph (3).

Comment: Section 191.148(a)(2) should not state that rejected merchandise drawback under 19 U.S.C. 1313(c) is a limited form of same condition drawback under 19 U.S.C. 1313(j)). Rejected merchandise should be treated as a separate statutory and drawback concept.

Analysis: Customs agrees that the language of this proposed section may be misleading. Customs recognizes the separate statutory authority of both same condition and rejected drawback. Proposed § 191.148(a)(2), (redesignated as § 191.142(a)(2)), is being revised merely to indicate rejected merchandise may be the subject of a same condition drawback claim.

Comment: There is no time limit specified for filing a rejected merchandise claim in § 191.148(b) (1) or (2). The question is raised whether the time limit is the same as for the same condition drawback.

Analysis: To claim drawback for rejected merchandise, the claimant must file Customs Form 7539, which contains details of the alleged failure to meet specifications, at the time the merchandise is returned to Customs custody. Customs must examine the merchandise to determine if in fact it does not meet specifications or was shipped without the consent of the consignee. The claimant is required to file the entry at the time the merchandise is returned to Customs, so he is under a time limit.

Proposed § 191.148(b)(1), (redesignated as § 191.142(b)(1)), is being clarified to emphasize this point.

Comment: The phrase "reasonable extensions" in § 191.148(b)(4) is too broad.

Analysis: Customs disagrees. Customs Headquarters and the field offices review each request on a case-by-case basis in determining whether to grant an extension and the length any extension granted. The phrase provides Customs with sufficient latitude in setting the extension.

Comment: No examination should be required under 19 U.S.C. 1313(c).

Analysis: Although that section does not explicitly mention examination, it does require that merchandise be returned to Customs custody "for exportation." Unless Customs can examine the merchandise, we cannot determine whether in fact it does not meet specifications. This was the intent of Congress in requiring the return of the rejected merchandise.

Comment: Section 191.148(b)(5) requires the exporter/claimant of rejected merchandise to establish the fact of exportation described in § 191.52, (as revised in this final rule), which requires a notice of exportation supported by a bill of lading. Currently, § 22.33(f), Customs Regulations, requires only the bill of lading.

Analysis: Customs agrees and believes it is unnecessary to require additional paperwork for rejected merchandise claimants, especially since the merchandise is returned to Customs custody prior to exportation. Therefore, proposed § 191.148(b)(5), (redesignated as § 191.142(b)(5)), is being revised to indicate that if a bill of lading is provided Customs, no notice of exportation is required.

Subpart O

Comment: Subpart O should be amended to give alcoholic beverages the

same status as domestic alcohol under 19 U.S.C. 1313(d).

Analysis: Prior to 1959, the Internal Revenue Code treated domestic alcohol and distilled spirits differently. As a result, Customs did (and still does) not consider whiskey, brandy, rum, etc. as "domestic alcohol." 19 U.S.C. 1313(d) allows drawback only on domestic alcohol.

In 1959, the Internal Revenue Code was amended to allow drawback under the concept that any product of a distilled spirits plant for beverage use was eligible. However, at that time, 19 U.S.C. 1313(d) was not amended by the Congress. Therefore, Customs still holds that in order to come under the first paragraph of 19 U.S.C. 1313(d), the "alcohol" used must be "Spirits distilled at more than 160 degrees of proof, which lack the taste, aroma, and other characteristics generally attributed to whiskey, brandy, rum, or gin, and which are substantially neutral in character * * *," as defined in 27 CFR 19.597(a)(1).

Comment: Section 191.158 allows the claimant 90 days to export the unmarketable distilled spirits from the date of acceptance of the drawback entry, the time period being conclusive unless a written request is made for additional 90 days. The commenter notes this time frame does not apply in Subpart N to rejected merchandise other than distilled spirits.

Analysis: Section 191.158 tracks the present internal revenue regulations applicable to unmarketable spirits. Customs administers the payment of drawback for unmarketable spirits. Under 19 U.S.C. 1313(c), the rejected merchandise must not meet sample or specification at the time of importation. Unmarketable spirits may be perfect at importation, but become unmarketable after importation. Rejected merchandise provisions and unmarketable spirits provisions are two different drawback concepts and are handled differently. If an importer wishes to receive drawback on the *duty* paid on distilled spirits, he must apply and meet the standards of 19 U.S.C. 1313(c) and the requirements of those attendant regulations. Subpart O refers only to internal revenue taxes.

Comment: The statute authorizing refund on internal revenue taxes on distilled spirits which are unmarketable, (26 U.S.C. 5062(c)), requires the Secretary to "refund, remit, rebate, or credit" but does not refer to "drawback". The benefit authorized by 26 U.S.C. 5062(c) does not meet the definition of "drawback" as stated in § 191.2. To define drawback as "in refund * * *" would not be appropriate as applied to the Internal Revenue Code. It is suggested that these regulations be included with other regulations dealing with a refund and for a cross-reference be put in Part 191. Alternatively, § 191.0, ("Scope"), might be expanded to include certain refunds, etc.

Analysis: Customs believes no change is necessary.

Customs definition of "drawback" is a refund of duties and internal revenue tax paid, etc. Also, the definition of "duties" in the present regulations includes internal revenue taxes. Notwithstanding the enabling legislation's reference to "refund, remit, etc., " the return of those taxes paid under 26 U.S.C. 5062(c) fits our definition of "drawback." Because Customs is the agency refunding those taxes, we prefer to call it "drawback."

Comment: Under 26 U.S.C. 5062(c) only the importer may receive the refund of internal revenue taxes for unmerchantable spirits provided under Subpart O. Therefore, it should be made clear that the term "exporter/claimant" in § 191.148(b) can refer only to the importer for purposes of Subpart O.

Analysis: Under 19 U.S.C. 1313(c), to which Subpart N refers in part, the importer or consignee can apply for and receive duties for rejected merchandise. Therefore, should a claimant under 26 U.S.C. 5062(c) wish to receive the *duty* paid as drawback, such claimant need not be the importer but could be the consignee and must meet the burden of proof under Subpart N. A consignee also may obtain internal revenue taxes under 19 U.S.C. 1313(c) or 1313(j) provided he meets the requirement of the applicable regulations in Subpart N. However, the comment with respect to Subpart O is correct and therefore §§ 191.152, 191.153(b) and 191.158 are being amended so that the export/claimant can be only the importer.

Subpart P

Comment: There should be included in § 191.163(a) the phrase "including foreign trade zones" after "* * * on articles manufactured or produced in the United States * * *"

Analysis: This is superfluous inasmuch as foreign trade zones are in the United States. Anything manufactured or produced in a zone is manufactured or produced in the United States.

Other Changes

1. T.D. 82-204 (47 FR 49355, Nov. 1, 1982), made extensive revisions to the Customs Regulations relating to bonded warehouses. Section 22.28(d), Customs Regulations, was so amended. Therefore, to conform to T.D. 82-204, it is necessary to amend the parallel section in the revision to § 22.28(d) which is § 191.133(c).

2. To conform the Customs Regulations to the changes made by the removal of Part 22, Customs Regulations, and the addition of new Part 191, Customs Regulations, the notice document proposed to amend Parts 7, 10, 113, 145, and 158. Subsequent to the publication of the proposed revision on August 26, 1982, section 7.8, Customs Regulations, was amended by T.D. 83-7 (48 FR 228, January 4, 1983), by removing the parenthetical phrase at the end of that section. Therefore, there is no need to further amend § 7.8 in this document.

3. Section 22.20a, and its parallel § 191.72, relating to accelerated payment of drawback claims, provides that a claimant, requesting accelerated payment of a claim, shall submit with the claim a computation of the amount thereon, and shall also file with Customs for approval by the regional commissioner, a bond on either Customs Form 7609 or 7611. Part 113, Customs Regulations, however, provides for approval of bonds by the Commissioner of Customs and the district director, but does not provide for approval of bonds by the regional commissioner. Specifically, section 113.14(x)(1), relating to single entry bond, Customs Form 7609, for Accelerated Payment of Drawback (single entry), and § 113.14(x)(2), relating to term bond, Customs Form 7611, for Accelerated Payment of Drawback (term), are subject, after execution, to approval by the district director. To remove this inconsistency between Parts 22 (and Proposed Part 191) and Part 113 as well as make other technical clarifications, this document amends by revising, adding, and removing the following provisions to provide that authority for approval or rejection of accelerated drawback payment shall remain with the regional commissioners:

1. Section 191.72(b), (revised);

2. Subpart B — "Classes and Approval of Bonds" in the index to Part 113, (revised);

3. Section 113.11(b), (revised);

4. Section 113.13a, (new);

5. Sections 113.14 (x)(1) and (x)(2), (removed);

6. Section 113.16, (revised); and,

7. Section 113.18, (revised).

Removal From Regulations

The following sections of Part 22 are removed from the revision:

1. Sections 22.6 (a), (b), (c), and (d), relating to general drawback rates;

2. Section 22.6(e), relating to bags and meat wrappers;

3. Section 22.6(f), relating to sugars and syrups;

4. Section 22.6(g), relating to linseed oil;

5. Section 22.6(g–l), relating to crude petroleum and petroleum derivatives;

6. Section 22.6(h), relating to piece goods;

7. Section 22.6(i), relating to fur skins and fur skin articles;

By removing from the revision the sections set forth in numbers 2–7 above, however, no member of the public would be forfeiting any rights and benefits. Questions concerning these substantive areas, which may arise in the future, may be addressed by a request for a ruling pursuant to Part 177, Customs Regulations (19 CFR Part 177). A drawback proposal may be submitted pursuant to Subpart B. Also, Customs Headquarters will publish as Treasury Decisions, as it has already done so in some cases, general drawback contracts under Subpart D on the above sections.

Editorial Changes

Throughout the revision, numerous editorial changes have been made to clarify and simplify the language contained in the drawback regulations, as well as correct typographical errors.

Conforming Changes

Various parts of Chapter I, title 19, Code of Federal Regulations, have sections which contain cross-references to Part 22. This document amends those sections of the Customs Regulations by conforming the cross-references found therein to new Part 191.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. An analysis of this determination is appended hereto.

Regulatory Flexibility Act

Pursuant to the provisions of section 3 of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601, *et seq.*), it is hereby certified that the revision of Part 22 will not have a significant economic impact on a substantial number of small entities. An analysis of this determination is appended hereto.

Paperwork Reduction Act

Pursuant to section 3504(h) of the Paperwork Reduction Act of 1980 (Pub. L. 96–511), this document is subject to review by the Office of Management and Budget (OMB). The proposed revision, approved by OMB, was assigned No. 1515–0094.

Drafting Information

The principal author of this document was Charles D. Ressin, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects

19 CFR Part 22

Customs duties and inspection, Exports, Imports, Claims, Drawback.

19 CFR Part 113

Customs duties and inspection, Exports, Imports, Surety bonds.

19 CFR Part 191

Customs duties and inspection, Exports, Imports, Claims, Drawback.

Amendments to the Regulations

Chapter 1, "United States Customs Service," of Title 19, Code of Federal Regulations (19 CFR Chapter 1), is amended as set forth below.

William von Raab,

Commissioner of Customs.

Approved: September 21, 1983.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

PART 22—DRAWBACK [REMOVED]

Charter I of title 19, Code of Federal Regulations, is amended by removing Part 22.

Chapter I of title 19, Code of Federal Regulations, is further amended by adding a new part, Part 191, to read as follows:

PART 191—DRAWBACK

Sec.

Sec.

Authority: R.S. 251, as amended, secs. 313, 624, 46 Stat. 693, as amended, 759, 77A Stat. 14; 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Headnote 11), 1313, 1624. Additional authority and statutes interpreted or applied are cited in the text or following the section affected.

Subpart A—General Provisions

§ 190.1 Scope.

This part sets forth general provisions applicable to all drawback claims and specialized provisions applicable to specific types of drawback claims.

§ 191.1 Authority of the Commissioner of Customs.

Pursuant to Treasury Department Order No. 165, Revised (T.D. 53654, 19 FR 7241), as amended, the Commissioner of Customs, with the approval of the Secretary of the Treasury, shall prescribe rules and regulations regarding drawback.

§ 191.2 Definitions.

(a) *Drawback.* "Drawback" means a refund or remission, in whole or in part, of a customs duty, internal revenue tax, or fee lawfully assessed or collected because of a particular use made of the merchandise on which the duty, tax, or fee, was assessed or collected.

(b) *Designated merchandise.* "Designated merchandise" means imported duty-paid merchandise or drawback products identified (either physically or by accounting methods), by drawback claimant as the basis for a drawback claim under 19 U.S.C. 1313(b).

(c) *Drawback proposal.* A "drawback proposal" means a written document executed by a manufacturer or producer which contains an offer to operate under the drawback law and regulations.

(d) *Drawback acceptance.* "Drawback acceptance" means a letter from Customs to the manufacturer or producer accepting the proposal. Regional commissioners of Customs accept proposals filed pursuant to 19 U.S.C. 1313(a). U.S. Customs Headquarters accepts proposals in all other cases.

(e) *Specific drawback contract.* A "specific drawback contract" means the drawback proposal and the drawback acceptance. Synopses of contracts are published in the weekly "Customs Bulletin," where each contract is assigned an identifying Treasury Decision (T.D.) number.

(f) *General drawback contract.* A "general drawback contract" means a contract offer prepared by Customs and published in the "Customs Bulletin", and a letter of acceptance by anyone able to comply with its terms and conditions. Letters of acceptance to adhere to the terms shall be filed with a regional commissioner.

(g) *Drawback product.* A "drawback product" means a finished or partially finished product manufactured in the United States under a drawback contract. A drawback product may be exported with a claim for drawback, or it may be used in the further manufacture of other drawback products by manufacturers who have appropriate drawback contracts, in which case drawback is claimed upon exportation of the ultimate product. For purposes of 19 U.S.C. 1313(b), drawback products may be designated as the basis for drawback or deemed to be domestic merchandise.

(h) *Drawback entry.* A "drawback entry" means a document containing a description of, and other required information concerning, exported or destroyed articles on which drawback is claimed. Depending on the type of drawback applied for, entries are filed on Customs Form 7512, 7539, 7573, 7575, 7579, or 7585.

(i) *Drawback claim.* A "drawback claim" means the drawback entry and related documents required by these regulations which together constitute the request for drawback payment.

(j) *Direct identification drawback.* "Direct identification drawback" means drawback authorized under section 313(a), Tariff Act of 1930, as amended (19 U.S.C. 1313(a)). See section 191.4(a)(1) of this part.

(k) *Substitution drawback.* "Substitution drawback" means drawback authorized under section 313(b), Tariff Act of 1930, as amended (19 U.S.C. 1313(b)). See section 191.4(a)(2) of this part.

(l) *Fungible merchandise.* "Fungible merchandise" means merchandise which for commercial purposes is identical and interchangeable in all situations.

(m) *Same kind and quality merchandise.* "Same kind and quality merchandise" means merchandise which may be substituted under substitution drawback. Fungible merchandise is always same kind and quality merchandise; however, same kind and quality merchandise is not always fungible merchandise.

(n) *Schedule.* A "schedule" means a document filed by a drawback claimant showing the quantity of imported material used or appearing in each unit of product exported with drawback or showing the different styles or the capacities of containers for the products.

(o) *Verification.* "Verification" means the examination of any and all records, (see § 162.1a(a) of this chapter), maintained by the claimant, whether or not specifically described in the claimant's proposal, which are required by the regulatory auditor to render a meaningful recommendation concerning the drawback claimant's conformity to the law and regulations and the determination of supportability, correctness, and validity of the specific claim or groups of claims being verified. Verification also includes a determination that the exported product was produced in conformity with the

drawback manufacturing process, as described and approved in the claimant's proposal.

(p) *Abstract of manufacturing records.* "Abstract of manufacturing records" means a summary of original documents. A Drawback Entry and Certificate of Manufacture for Exported Articles, Customs Form 7575, or Certificate of Manufacture and Delivery Customs Form 7577, when properly completed, may serve as abstracts of manufacturer's records.

§ 191.3 Duties subject to drawback.

The duties subject to drawback include:

(a) All ordinary Customs duties;

(b) Dumping duties assessed under title VII, Tariff Act of 1930, as amended (19 U.S.C. 1673.);

(c) Countervailing duties assessed under sections 303 and 701, Tariff Act of 1930, as amended (19 U.S.C. 1303, 1671); and

(d) Marking duties assessed under section 304(c), Tariff Act of 1930, as amended (19 U.S.C. 1304(c)).

§ 191.4 Types of drawback.

(a) *Drawback of duties and taxes.* Drawback of duties and taxes ordinarily are authorized in the following instances:

(1) *Direct identification drawback.* Drawback of duties is provided for in section 313(a), Tariff Act of 1930, as amended (19 U.S.C. 1313(a)), upon the exportation of articles manufactured or produced in the United States wholly or in part with the use of imported merchandise.

(2) *Substitution drawback.* If imported duty-paid merchandise and duty-free or domestic merchandise of the same kind and quality are used in the manufacture or production of articles within a period not to exceed 3 years from the receipt of the imported merchandise by the manufacturer or producer of the articles, drawback is provided for in section 313(b), Tariff Act of 1930, as amended (19 U.S.C. 1313(b)), upon the exportation of any of the articles, even though none of the imported merchandise may actually have been used in the manufacture or production of the exported articles. The amount of drawback is the same as that which would have been allowed had the merchandise used therein been imported.

(3) *Merchandise not conforming to sample or specifications or shipped without consent of consignee.* Drawback is provided for in section 313(c), Tariff Act of 1930, as amended (19 U.S.C. 1313(c)), upon the exportation of imported merchandise not conforming to sample or specifications or shipped without consent of the consignee.

(4) *Drawback of internal-revenue taxes.* Drawback of internal-revenue taxes is provided for in section 313(d), Tariff Act of 1930, as amended (19 U.S.C. 1313(d)), upon the exportation of flavoring extracts and medicinal or toilet preparations (including perfumery) manufactured or produced in the United States in part from domestic tax-paid alcohol.

(5) *Imported salt for curing fish.* Drawback of duties if provided for in section 313(e), Tariff Act of 1930, as amended (19 U.S.C. 1313(e)), on salt imported in bond and used in curing fish. (See section 10.80 of this chapter.)

(6) *Exportation of meats cured with imported salt.* Drawback of duties is provided for in section 313(f), Tariff Act of 1930, as amended (19 U.S.C. 1313(f)), in amounts of not less than $100, upon the exportation of packed or smoked meats cured in the United States with imported salt.

(7) *Material for construction and equipment of vessels and aircraft built for foreigners.* Drawback of duties is provided for in section 313(g), Tariff Act of 1930, as amended (19 U.S.C. 1313(g)), on materials imported and used in constructing and equipping vessels and aircraft built for foreign account and ownership or for the government of any foreign country, even though these vessels and aircraft may not be exported within the strict meaning of the term.

(8) *Foreign-built jet aircraft engines processed in the United States.* Drawback of duties is provided for in section 313(h), Tariff Act of 1930, as amended (19 U.S.C. 1313(h)), in amounts of not less than $100, upon the exportation of jet aircraft engines manufactured or produced abroad that have been overhauled, repaired, rebuilt or reconditioned in the United States with the use of imported merchandise, including parts.

(9) *Same condition drawback.* Drawback of duties is provided for in section 313(j), Tariff Act of 1930, as amended (19 U.S.C. 1313(j)), on imported merchandise exported in the same condition as when imported, or destroyed under Customs supervision and not used within the United States before such exportation or destruction.

(10) *Supplies for certain vessels and aircraft.* Drawback of duties and taxes is provided for in section 309(b), Tariff Act of 1930, as amended (19 U.S.C. 1309(b)), on articles withdrawn from bonded warehouses, bonded manufacturing warehouses, continuous Customs custody elsewhere than a bonded warehouse, or foreign trade zones and articles of domestic manufacture or production, which are laden as supplies upon certain vessels or aircraft of the United States or as supplies including equipment upon or used in the maintenance or repair of certain foreign vessels or aircraft.

(11) *Merchandise exported from continuous Customs custody.* Drawback of duties is provided for in accordance with section 557(a), Tariff Act of 1930, as amended (19 U.S.C. 1557(a)), upon the exportation to a foreign country, or the shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or Guam, of merchandise upon which duties have been paid which has remained continuously in bonded warehouse or otherwise in Customs custody since importation, provided it was exported or shipped within 5 years after the date of its importation.

(12) *Merchandise transferred to a foreign trade zone from Customs territory.* Drawback of duties and taxes is provided for in accordance with the fourth proviso of section 3 of the Foreign Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81c), on merchandise transferred to a foreign trade zone from Customs territory for the sole purpose of exportation, destruction (except destruction of distilled spirits, wines, and fermented malt liquors), or storage.

(b) *Refund of internal revenue taxes on imported distilled spirits, wines, or beer.* Refund, remission, abatement, or credit of internal revenue taxes paid or determined incident to importation on imported distilled spirits, wines, and beer is provided for in accordance with section 5062(c), Internal Revenue Code, as amended (26 U.S.C. 5062(c)), upon the exportation, or destruction under Customs supervision of these articles found after entry to be unmerchantable or not to conform to sample or specifications and which are returned to Customs custody.

§ 191.5 Retention of records.

All records required to be kept by the manufacturer or producer under this part with respect to drawback claims, and records kept by others to complement the records of the manufacturer or producer (see sections 191.21(a)(1) and 191.22(d) of this part), shall be retained for at least 3 years after payment of such claims.

§ 191.6 Authority to sign drawback documents.

(a) *Who shall sign.* Documents listed in paragraph (b) of this section shall be signed by one of the following:

(1) The president, a vice president, secretary, or treasurer of a corporation;

(2) A full partner of a partnership;

(3) The owner of a sole proprietorship; or

(4) Any person other than those described in paragraphs (a)(1) through (a)(3) of this section with a power of attorney. (See subpart C of Part 141 of this chapter.)

(b) *List of documents.* The following documents require execution in accordance with paragraph (a) of this section:

(1) Drawback entries.

(2) Certificates of delivery.

(3) Certificates of manufacture.

(4) Abstracts of manufacturing records.

(5) Proposals of manufacturers or producers, schedules, and supplemental schedules.

(6) Proposals of subcontractors.

(7) Letter of intention to adhere to general drawback contracts.

(8) Endorsements of exporters on bills of lading or notices of exportation.

(9) Authorizations by manufacturers, producers, exporters, or agents to pay drawback to other persons.

§ 191.7 Protests.

Protest procedures shall be in accordance with Part 174 of this chapter.

(Sec. 514, 46 Stat. 734, as amended; 19 U.S.C. 1514).

§ 191.8 Time Limitations.

(a) *General time limit.* Drawback shall be allowed only if the completed article is exported within 5 years after importation of the merchandise identified or designated to support the claim.

(19 U.S.C. 1313(j))

(b) *Same condition drawback.* Drawback shall be allowed on imported merchandise if, before the close of the 3-year period beginning on the date of importation, the merchandise is exported in the same condition as when imported, or destroyed under Customs supervision, and is not used within the United States before such exportation or destruction.

(19 U.S.C. 1313(j)).

(c) *Merchandise in continuous Customs custody.* Drawback shall be allowed on imported merchandise which is exported, or shipped from continuous Customs custody to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or Guam, only if exported or shipped within 5 years after the date of its importation.

(Sec. 557(a), 46 Stat. 744, as amended; 19 U.S.C. 1557(a)).

§ 191.9 Falsification of drawback claims.

Any person who knowingly and willfully files any false or fraudulent entry or claim for the payment of drawback upon the exportation of merchandise or knowingly or willfully makes or files any false document for the purpose of securing the payment to himself or others of any drawback on the exportation of merchandise greater than that legally due, shall be fined not more than $5,000 or imprisoned no more than 2 years, or both, and the merchandise or its value shall be forfeited.

(Sec. 550, 62 Stat. 718; 18 U.S.C. 550).

§ 191.10 Verification of drawback claims.

(a) *Claims.* A drawback claim filed under a drawback contract shall be subject to verification by the regional Regulatory Audit Division under the jurisdiction of the regional commissioner in whose region the claim is filed when the factory covered by the claim also is located in the same region.

(b) *Two or more factories.* If the claim selected for verification is filed in one region and one or more factories covered by the claim is located in another region, the regional commissioner selecting the claim for verification, in addition to taking the verification action provided for in paragraph (a) of this section, may forward copies of the claim and the drawback contract, and request for verification to the regional commissioners in whose regions the other factories are located.

(c) *Method.* The verifying official shall verify the claim and material set forth in the related drawback contract. Verification shall include an examination of the manufacturing records and all the accounting and financial records relating to the transaction(s).

(d) *Liquidations.* When a claim has been selected for verification, the appropriate Customs official will be notified of the claimant's identity, and liquidation will be postponed on only those claims selected for verification. Postponement will continue until the in effect verification has been completed and the appropriate Deputy Assistant Regional Commissioner (Regulatory Audit) issues a report. In the event a substantial error is revealed during the verification, Customs may postpone liquidation of all related product line claims, or in Customs discretion, all claims.

(e) *Errors in drawback proposals.*—(1) *Contracts accepted by Customs Headquarters.*—(i) *Action by regional commissioner.* If verification of a drawback claim filed under a drawback contract accepted by Headquarters reveals errors or deficiencies in the drawback proposal on which the contract was based, the regional commissioner shall furnish a copy of the audit report to Headquarters (Attention: Drawback and Bonds Branch, Office of Regulations and Rulings).

(ii) *Action by Headquarters.* A regional commissioner forwarding an audit report to Headquarters shall suspend liquidation of all drawback claims filed under the contract. Headquarters shall offer the claimant an opportunity to correct its proposal within a specified time.

(iii) *If claimant does not correct proposals.* If the claimant does not take corrective action within the prescribed time, the appropriate regional commissioner shall liquidate the claim(s) "no drawback."

(2) *Contracts accepted by regional commissioner.* The regional commissioner shall offer the claimant an opportunity within a specified time to amend proposals that are the basis of contracts which he has accepted. If the claimant does not take corrective action within the prescribed time, the regional commissioner shall liquidate the claim(s) "no drawback."

§ 191.11 Merchandise in which a United States Government interest exists.

(a) *Restricted meaning of Government.* A United States Government instrumentality operating with nonappropriated funds shall not be considered a Government entity within the meaning of this section. Surety on any drawback bond undertaken by these instrumentalities will not be required.

(b) *Certificate.* With each drawback entry, except those filed pursuant to section 313(c) and 313(j), Tariff Act of 1930, as amended (19 U.S.C. 1313(c), (j)), the drawback claimant shall certify whether or not the merchandise concerned was sold to the United States Government.

(c) *Allowance of drawback.* If the merchandise was sold to the United States Government, drawback shall be available only to the:

(1) Department, branch, or agency of the United States Government, which purchased it; or

(2) Supplier, or any of the parties specified in § 191.73(b) of this part, provided the claim is supported by documentation signed by a proper officer of the department, branch or agency concerned certifying that the right to drawback was reserved by the supplier with the knowledge and

consent of the department, branch, or agency.

§ 191.12 Drawback on duties paid to Puerto Rico.

Any drawback of duties authorized under this part shall be paid from special fund 20X6587(A/R), Refunds, Transfers and Expenses of Operations, Puerto Rico, U.S. Customs Service, if the duties were originally paid into this fund (see 19 U.S.C. 1313(l)).

§ 191.13 Guantanamo Bay, insular possessions, trust territories.

Guantanamo Bay Naval Station shall be considered foreign territory for drawback purposes. However, under 19 U.S.C. 1313, there is no authority of law for the allowance of drawback of Customs duty on articles manufactured or produced in the United States and shipped to Puerto Rico, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Guam, Canton Island, Enderbury Island, Johnston Island, or Palmyra Island.

Subpart B—Specific Drawback Contracts

§ 191.21 Drawback proposal.

(a) *Proper applicant.* Unless operating under a general drawback contract, each manufacturer or producer of articles intended for exportation with drawback, whether a primary, intermediate, or final manufacturer or producer of the articles and whether or not the owner of the merchandise used in the manufacture or production, shall apply for a specific drawback contract by submitting a drawback proposal. Procedures for adhering to a general drawback contract are provided in Subpart D.

(1) *Complementary recordkeeper.* Each person who keeps complementary records as provided for in section 191.22(d) of this part shall file a proposal describing these records in accordance with the procedure prescribed in this section. Complementary records may be signed by the complementary recordkeeper in accordance with § 191.6(a) of this part.

(2) *Subcontractors.* If a manufacturer or producer having a drawback contract engages a subcontractor to perform work which for drawback purposes does not constitute a manufacture or production, with the use of material which the principal plans to make the subject of a drawback claim, the subcontractor, unless operating under a general drawback contract, shall prepare a drawback proposal to establish how it will maintain the identification of the merchandise. The proposal, which is subject to the provisions of this section, is required only if the work performed by the subcontractor results in a problem in identification of the merchandise (for example, by changing its form or quantity).

(b) *Contents.* The proposal of each manufacturer or producer, complementary recordkeeper, and subcontractor shall:

(1) Describe his manufacturing operation fully and method of compliance with all requirements of the drawback law and regulations;

(2) State that the records of identification, manufacture or production, and storage prescribed in § 191.22 will be maintained; and

(3) Contain an agreement to follow the methods and keep records concerning drawback procedures.

(c) *Sample proposal.* Except for direct identification drawback, the Drawback and Bonds Branch, Office of Regulations and Rulings, Customs Headquarters, upon request, shall provide each prospective, drawback applicant with a sample drawback proposal to assist the prospective applicant in preparing its submission. Sample proposals for direct identification drawback shall be provided by the regional commissioner upon request.

(d) *Submission.* Each manufacturer or producer who proposes to file for drawback exclusively under the provisions of sections 313(a), Tariff Act of 1930, as amended (19 U.S.C. 1313(a)), shall submit the proposal described in paragraph (b) of this section, in duplicate, to the regional commissioner where its drawback entries will be liquidated. Each manufacturer or producer who proposes to file for drawback under the provision of section 313(b), (d), (g), or (h), Tariff Act of 1930, as amended (19 U.S.C. 1313(b), (d), (g), (h)), or in any combination of section 313(a), Tariff Act of 1930, as amended (19 U.S.C. 1313(a)), with section 313(b), (d), or (g), shall submit the proposal described in paragraph (b) of this section, in triplicate, to Customs Headquarters (Attention: Drawback and Bonds Branch, Office of Regulations and Rulings).

(e) *Two or more regions involved.* If drawback entries are to be liquidated at more than one regional office, the manufacturer or producer shall file two additional copies of the proposal for each additional office.

§ 191.22 Records, storage, identification.

(a) *Records for direct identification and other non-substitution manufacturing drawback. (1) General Rule.* Except for record requirements under section 313(b), Tariff Act of 1930, as amended (19 U.S.C. 1313(b)), set forth in § 191.32 of this part, each manufacturer or producer shall keep records to establish for all articles manufactured or produced for exportation with drawback:

(i) The date or inclusive dates of manufacture or production;

(ii) The quantity and identity of the imported duty-paid merchandise or drawback products used in, or, if claim for waste is waived, and there are no multiple products, the quantity and identity of the imported merchandise or drawback products appearing in the articles manufactured or produced;

(iii) The quantity and description of the articles manufactured or produced;

(iv) The quantity of waste incurred. If claim for waste is waived and the appearing in basis is used, waste records need not be kept unless required to establish the quantity of imported duty-paid merchandise or drawback products appearing in the articles; and

(v) That the finished articles on which drawback is claimed were exported within 5 years after the importation of the duty-paid merchandise.

(2) *Valuable waste.* When waste has a value and the manufacturer or producer has not limited its claims to the quantity of imported duty-paid merchandise or drawback products appearing in the articles it shall keep records to show the factory value of the imported duty-paid merchandise or drawback products used and the factory value of the waste. In liquidating the drawback entry, the quantity of imported duty-paid merchandise or drawback products used will be reduced by an amount equal to the quantity of merchandise the value of the waste would replace.

(3) *Duty-free or domestic merchandise.* The records of the manufacturer or producer shall show the quantity, if any, of duty-free or domestic merchandise used, when these records are necessary to determine the quantity of imported duty-paid merchandise or drawback products used in the manufacture or production of the articles or appearing in them.

(4) *Filing an abstract.* The drawback claimant shall file with the entry an abstract of the records of the manufacturer or producer.

(5) *Multiple products.*

(i) *General rule.* Where two or more products result from the use of merchandise, records shall show the value of each product at the time of separation.

(ii) *Claim covering a manufacturing period.* Where the operation results in two or more products and a claim covers a manufacturing period rather

than a manufacturing lot, the time of separation of the products shall be considered the entire period covered by the claim, and the value per unit of product is its weighted average market value for the period. Manufacturing periods in excess of one month may not be used without specific approval of Customs.

(b) *Storage and identification.* The merchandise and articles to be exported shall be stored in a manner which will enable the manufacturer, producer, or claimant (1) to determine, and the Customs officials to verify, the applicable import entry, certificate of delivery, or certificate of manufacture and delivery number or numbers; and (2) to identify with respect to that import entry, certificate of delivery, or certificate of manufacture and delivery, the imported duty-paid merchandise or drawback products used in the manufacture or production.

(c) *Identification of two or more lots.* Manufacturers, producers, or claimants may identify for drawback purposes commingled lots of fungible merchandise and commingled lots of fungible products by applying first-in-first-out (FIFO) accounting principles or any other accounting procedure approved by Customs.

(d) *Complementary records.* When Customs Headquarters or the regional commissioner, in appropriate cases, determines that a manufacturer or producer is unable to record all the information required for drawback, complementary records covering the information not available to the manufacturer or producer may be kept by the person(s) in the United States for whose account the products are manufactured or produced; and abstracts of these records shall be filed with the drawback entry. (See § 191.21(a)(1)).

(e) *Records and storage of merchandise by persons required to certify its delivery.*—(1) *Storage and records.* Each person required by § 191.65 and 191.66(d) of this part to certify the delivery of imported merchandise or drawback products shall store this merchandise and products while in his possession and maintain records to show the:

(i) Quantity, identity, and description of the merchandise or products;

(ii) Date on which the merchandise or products were received by him;

(iii) Person from whom received;

(iv) Date delivered by him to other persons; and

(v) Persons to whom these deliveries were made.

(2) *Certificate or endorsements.* These records shall be the basis of the certificates or endorsements required by §§ 191.65 and 191.66(d) of this part.

§ 191.23 Approval.

(a) *General rule.* If the required proposal(s) comply with the law and regulations, the regional commissioner in a case under section 313(a), Tariff Act of 1930, as amended (19 U.S.C. 1313(a)), or Customs Headquarters in a case under section 313 (b), (d), (g), or (h), Tariff Act of 1930, as amended (19 U.S.C. 1313 (b), (d), (g), or (h)), or in any combination of section 313 (a) with section 313 (b), (d), or (g), shall approve the drawback contract for a period of 15 years from the date of approval. (See § 191.26 of this part.)

(b) *Two or more regions.* When a proposal under section 313(a), Tariff Act of 1930, as amended (19 U.S.C. 1313(a)), shows that entries are to be filed with more than one regional commissioner, the regional commissioner at the place first listed in the proposal has the authority to approve or disapprove the contract.

(c) *Drawback entries filed before contract issued.* Drawback entries may be filed before the drawback contract covering the claim is approved, but no drawback shall be paid until the contract is approved.

(d) *Payment of drawback.* After approval of the contract, drawback will be paid on articles manufactured or produced and exported in accordance with the law, regulations, and contract.

§ 191.24 Schedules and supplemental schedules.

When a drawback contract provides that drawback shall be based upon a schedule filed by the manufacturer or producer, the appropriate regional commissioner where the entry is filed or Customs Headquarters, in accordance with § 191.23 of this part, shall review, and if satisfactory, approve the drawback schedule. If the contract authorizes the filing of supplemental schedules, schedules may be revised as necessary by the holder of the drawback contract. These revised supplemental schedules, if approved by the appropriate regional commissioner, shall be used to liquidate drawback claims.

§ 191.25 Modification of contracts.

(a) *Supplemental proposals.* A manufacturer or producer desiring to modify an existing contract shall prepare a supplemental proposal in the form of the original proposal. The supplemental proposal shall contain all information necessary for a complete contract, as provided in § 191.21 of this part.

(b) *Approval.*—(1) *General.* Except as provided in paragraph (b)(2) of this section, the appropriate regional commissioner or Customs Headquarters shall approve a new drawback contract pursuant to § 191.23 of this part, for a period of 15 years from the date of its approval if the supplemental proposal complies with the law and regulations.

(2) *Limited modifications.* A supplemental proposal to modify an existing contract under section 313(b), (d), or (g), Tariff Act of 1930, as amended, which otherwise would be submitted to Customs Headquarters, shall be submitted to the appropriate regional commissioner for approval provided the changes covered by the modification are limited to:

(i) A change in location of the factory of the manufacturer or producer;

(ii) An additional factory at which the methods followed and the records maintained are the same as those at another factory operating under an existing drawback contract of the manufacturer or producer;

(iii) The succession of a sole proprietorship, partnership, or corporation to the operations of the manufacturer or producer; or

(iv) Any combination of the foregoing changes.

(c) *Effect.* The new drawback contract shall supersede the contract which it modifies, and the Customs official who approves the new contract shall revoke the pre-existing contract without prejudice to claims existing thereunder.

§ 191.26 Termination or renewal.

Drawback contracts shall terminate 15 years from the date of approval unless, prior to the expiration of each 15-year period, the manufacturer or producer in accordance with § 191.23 of this part requests the applicable regional commissioner or Customs Headquarters to renew the contract for another 15-year period. A contract issued under section 313(a), Tariff Act of 1930, as amended (19 U.S.C. 1313(a)), covering two or more regions, shall be renewed by the regional commissioner who approved the contract. A manufacturer or producer may terminate its contract at any time by writing to the appropriate regional commissioner or Customs Headquarters, as applicable.

Subpart C—Use of Substituted Merchandise

§ 191.31 Drawback substitution.

The procedures set forth in subparts A and B of this part are applicable to drawback under the substitution.

provision (19 U.S.C. 1313(b)), except as otherwise provided in this subpart.

§ 191.32 Records and general provisions.

(a) *Records for substitution drawback.* The records of the manufacturer or producer of articles manufactured or produced in accordance with section 313(b), Tariff Act of 1930, as amended (19 U.S.C. 1313(b)), shall establish:

(1) The identity and specifications of the merchandise designated;

(2) The quantity of merchandise of the same kind and quality as the designated merchandise used to produce (or appearing in) the exported articles;

(3) That, within 3 years after receiving the designated merchandise at its factory, the manufacturer or producer used it in manufacturing or production and that during the same 3-year period, it manufactured or produced the exported articles; and

(4) That the completed articles were exported within 5 years after importation of the designated merchandise.

(b) *Valuable waste records.* When drawback claims are not limited to the quantity of merchandise appearing in the articles manufactured or produced for exportation with drawback, the records of the manufacturer or producer shall show the quantity and value of both the merchandise used in the manufacture or production of the articles and valuable waste incurred in order that the deduction provided for in § 191.22(a)(2) may be made in liquidation.

(c) *Exchanged petroleum.* To comply with paragraph (a)(3) of this section, the use of domestic crude petroleum exchanged for imported crude petroleum in conformity with Presidential Proclamation No. 3279 of March 10, 1959, as amended, and the Oil Import Regulations issued thereunder, shall constitute use of the imported crude petroleum provided no certificate of delivery on Customs Form 7543 is issued covering this imported crude petroleum.

(d) *Use by same manufacturer or producer at different plants.* Duty-paid merchandise or drawback products used at one plant of a manufacturer or producer within 3 years after the date on which the material was received may be designated as the basis for drawback on articles manufactured or produced in accordance with these regulations at other plants of the same manufacturer or producer.

(e) *Designation.* A manufacturer or producer may designate any merchandise which it has used in manufacturing or production.

§ 191.33 Multiple products.

When two or more products are produced concurrently in an operation under section 313(b), Tariff Act of 1930, as amended (19 U.S.C. 1313(b)), drawback shall be distributed to each product in accordance with its relative value at the time of separation. Where the abstract covers a manufacturing period rather than a manufacturing lot, the entire period of the abstract is the time of separation of the products and the value per unit of product is the weighted average market value for the abstract period.

§ 191.34 Agency.

(a) *General rule.* If an owner of imported or domestic merchandise furnishes this merchandise to an agent in accordance with a contract between the two parties, and the agent manufactures from it articles for the owner's account, the owner shall be considered as the user of the merchandise.

(b) *Contracts required.*—(1) *Owner's contract.* An owner of merchandise who wishes to be considered a manufacturer pursuant to paragraph (a) of this section shall apply for a drawback contract under subpart B of this part. The proposal shall describe the agency arrangement and explain how the owner and agent together will comply with the drawback law and regulations.

(2) *Agent's contract.* Each agent operating under this section must have a drawback contract covering the articles manufactured.

Subpart D—General Drawback Contracts

§ 191.41 Applicability.

A general drawback contract is designed to simplify drawback procedures for certain common manufacturing operations but does not preclude or limit the use of drawback proposals and specific drawback contracts.

§ 191.42 Procedures.

(a) Customs Headquarters shall from time to time prepare and publish in the "Customs Bulletin" an offer for a general drawback contract in situations where numerous manufacturers or producers have similar operations and wish to claim drawback.

(b) Any manufacturer or producer who can comply with the terms and conditions of the published offer for a general drawback contract may adhere to it by notifying a regional commissioner in writing of its acceptance and providing him with the following information:

(1) Name and address of adherent;

(2) Factories which will operate under the contract;

(3) If a corporation, the names of officers or persons with power of attorney who will sign drawback documents on behalf of the adherent.

§ 191.43 Acknowledgement.

The regional commissioner shall acknowledge in writing the receipt of the letter of acceptance of the manufacturer or producer of an offer for a general drawback contract. The general drawback contract for that manufacturer or producer shall be effective for a period of 15 years from the date of the letter of acknowledgement.

§ 191.44 Termination or renewal.

A general drawback contract shall terminate 15 years from the date of the letter of acknowledgement unless, prior to the expiration of the 15-year period, the manufacturer or producer requests the applicable regional commissioner to renew the contract for another 15-year. A manufacturer or producer may terminate its contract at any time.

§ 191.45 Payment.

Drawback will be paid on articles manufactured or produced and exported in accordance with the law, regulations, and general drawback contract.

Subpart E—Evidence of Exportation

§ 191.51 Alternative procedures.

Exportation of articles for drawback purposes shall be established by complying with one of the following procedures:

(a) Notice of exportation, § 191.52;

(b) Exporter's summary, § 191.53;

(c) Certified notice of exportation for mail shipments, § 191.54;

(d) Notice of lading for supplies on certain vessels or aircraft, § 191.93, or

(e) Notice of transfer for articles manufactured or produced in United States which are transferred to a foreign trade zone, § 191.163.

§ 191.52 Notice of exportation.

(a) *Filing.* A drawback claimant may support the drawback claim with a notice of exportation on Customs Form 7511 for each shipment of merchandise covered by the claim.

(b) *Contents.* The notice of exportation shall show the:

(1) Name of exporting vessel or other carrier;

(2) Number and kinds of packages and their marks and numbers;

(3) Description of the merchandise, including its weight (gross and net), gauge, measure, or number;

(4) Name of the exporter; and

(5) Country of ultimate destination.

(c) *Documentary evidence of exportation.* (1) *Notice of exportation certified by Customs at the time of exportation.* The exporter-claimant shall file simultaneously with the appropriate Customs officer, Customs Form 7511 and the shipper's export declaration or the ocean/airway export bill of lading. The Customs officer shall review both forms and determine whether the information contained therein is accurate. Upon receipt of the outbound manifest, the Customs officer shall compare that document with Customs Form 7511 to verify the facts of exportation. Upon compliance with this procedure, the Customs officer shall certify Customs Form 7511, and return the certified copy and one uncertified copy of this document to the exporter-claimant.

(2) *Uncertified notice of exportation.* An uncertified notice of exportation shall be supported by documentary evidence of exportation, such as the bill of lading, air waybill, freight waybill, Canadian Customs manifest, cargo manifest, or certified copies thereof, issued by the exporting carrier. Supporting documentary evidence shall establish fully the time and fact of exportation and the identity of the exporter.

(d) *Numbering.* Prior to filing a notice of exportation with the drawback entry, the claimant shall assign to the notice a number which shall be stamped or endorsed on the original and each copy of the notice. The number assigned shall correspond to that of the supporting document, such as the bill of lading, air waybill, or cargo manifest, filed with the notice of exportation. If the supporting document covers more than one notice of exportation, the claimant shall assign to each notice the same number; but, each notice shall be further identified by an alphabetic designation beginning with the letter "A". It shall give a different alphabetic designation to each notice having the same number. If the supporting document has no number. It shall number consecutively each notice of exportation.

§ 191.53. Exporter's summary.

(a) *Eligibility.* This procedure shall be available to improve administrative efficiency.

(b) *Application.* The exporter-claimant shall request permission to use this procedure with the regional commissioner where the drawback claim will be filed, unless in cases of merchandise the subject of same condition drawback, the regional commissioner has delegated authority to approve requests to a district director. In that circumstance, the request shall be made with the district director.

(c) *Approval.* The regional commissioner, or the district director, if applicable in the case of merchandise the subject of same condition drawback, shall grant permission to use this procedure if he concludes that its use would contribute to administrative efficency, and the exporter claimant is not delinquent or otherwise remiss in his transactions with Customs.

(d) *Bond.* The exporter-claimant shall furnish a drawback export bond on Customs Form 7613, or shall designate rider "K" on General Term Bond. Customs Form 7595, in an amount equal to 25 percent of the drawback to be claimed on entries filed by him during the term of the bond.

(e) *Documentary evidence.*—(1) *Records.* The exporter-claimant shall maintain complete and accurate records of exportation, including the identity and location of the ultimate consignee of the exported articles. The exporter shall retain these records for at least 3 years after payment of such claims.

(2) *Additional evidence.* The exporter-claimant shall support the drawback entry with a chronological summary of the exports and any additional evidence required by Customs officers to establish fully the identity of the exported articles and the fact of exportation. In the case where the exporter-claimant uses this procedure for merchandise the subject of same condition drawback, he shall show also that the merchandise was exported in the same condition as when imported.

(3) *Format of chronological summary.* The chronological summary of the exports shall be in a format acceptable to the regional commissioner with whom drawback claims are filed and shall contain substantially the data provided for in the following sample format:

Chronological Summary of Exports

Drawback entry No.———————.

Exporter/claimant ———————.

Period from ——————— to ———————.

Date of export	Exporting carrier	Freight or air waybill, bill of lading, manifest No. etc [1]	Marks and numbers	Description	Net quantity	Schedule B No.	Destination
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)

[1] This number is to be used to associate the claim with exportation evidence retained by claimant.

§ 191.54 Certified notice of exportation by mail.

(a)(1) *Procedure.* If the merchandise on which drawback is to be claimed is exported by mail or parcel post, the exporter or his agent shall complete a notice of exportation on Customs Form 7511 in triplicate and file it with the postmaster at the place of mailing. The merchandise shall be delivered to the postmaster at the same time and mailed under his supervision.

(2) *Certification.* After the package is mailed, the postmaster shall certify one copy of the notice of exportation and return this copy and one uncertified copy to the exporter or his agent for subsequent filing with the drawback entry. The postmaster shall retain one copy as his record of the transaction.

(b) *Waiver of withdrawal.* A waiver of the right to withdraw a package from the mail shall be stamped or written on each package for export, signed by the exporter.

§ 191.55 Exportation by the Government.

(a) *Claim by U.S. Government.* When a department, branch, or agency of the United States Government exports products with the intention of claiming drawback, it may establish the exportation in the manner provided in §§ 191.52 or 191.53. No bond shall be required when the United States Government claims drawback.

(b) *Claim by supplier.* When a supplier of merchandise to the Government or any of the parties specified in § 191.73(b) of this part claims drawback, exportation shall be established under §§ 191.52 and 191.53.

§ 191.56 Amendment of evidence of exportation.

At any time within the 3-year period prescribed for the completion of the drawback claim, the export or its agent may amend as notice of exportation or exporter's summary, provided the regional commissioner is satisfied that

the amendment is complete and correct. A written request for amendment with supporting evidence shall be submitted to the regional commissioner where the drawback entry is filed

§ 191.57 Examination of the merchandise.

The district director may examine any merchandise to be exported with drawback for any reason deemed appropriate.

Subpart F—Completion of Drawback Claims

§ 191.61 Time for filing.

A drawback entry and all documents necessary to complete a drawback claim, including those issued by one Customs officer to another, shall be filed or applied for, as applicable, within 3 years after the date of exportation of the articles on which drawback is claimed, except that any landing certificate required under § 191.67(d) of this part shall be filed within the time limit prescribed therein. Claims not completed within the 3-year period shall be considered abandoned. No extension will be granted unless it is established that a Customs officer was responsible for the untimely filing.

§ 191.62 Filing procedure.

(a) *Entry and certificate of manufacture.*—(1) *Customs Form 7575.* Except as provided in paragraph (a)(2) of this section, the drawback claimant shall file with the appropriate district director the drawback entry and certificate of manufacture in duplicate on Customs Form 7575:–A, if claiming under 19 U.S.C. 1313(a) or Customs Form 7575—B, if claiming under 19 U.S.C. 1313(b). The district director may require an additional copy for administrative use.

(2) *Customs Form 7573.* The drawback claimant shall file with the appropriate district director the original drawback entry on Customs Form 7573 in the two instances listed below. The district director may require an additional copy for administrative use.

(i) *Certificates of manufacture filed prior to entry.* When the drawback claimant files a certificate of manufacture prior to the filing of the entry, it shall file the entry on Customs Form 7573 and refer to the certificates of manufacture in the entry by the official number instead of describing the particulars of importation and manufacture.

(ii) *Purchase of manufactured articles for exportation.* A purchaser of a completely manufactured article who exports it and claims drawback shall file an entry on Customs Form 7573 accompanied by a certificate of manufacture and delivery on Customs Form 7577, if that certificate is not already on file.

(3) *Filing in two or more regions.* If the drawback entry is filed in a region other than where the certificate of manufacture is on file, the regional commissioner with whom the certificate is on file, after liquidation and at the request of the person filing the certificate or to whom such merchandise was delivered, shall transmit to the regional commissioner where the entry is filed an extract on Customs Form 4537. The extract shall be considered an original certificate for liquidation purposes.

(4) *Two or more shipments.* One entry may cover several shipments.

(b) *Evidence of exportation.*—(1) *Notice of exportation.* When the entry covers exports under § 191.52(c)(2) of this part, the claimant shall file with the entry one copy of the notice of exportation and the original or a certified copy of the supporting document. For an entry under 191.52(c)(1) and 191.54, the claimant shall file with the entry one copy of the notice of exportation.

(2) *Evidence of right to drawback.* The notice of exportation shall show that the merchandise was shipped by the person filing the drawback entry, or shall be endorsed by the person in whose name the merchandise was shipped showing that the person filing the entry is authorized to claim drawback and receive payment.

(3) *Chronological summary of exports.* For exports under § 191.53 of this part, the claimant shall file with the entry one copy of the chronological summary of exports.

(c) *Multiple claimants.*—(1) *Notice of Exportation.* Where more than one party claims drawback (e.g., a chemical manufactured under drawback regulations is exported in a container also manufactured under drawback regulations), each drawback claimant shall file a separate notice of exportation describing the component product to which its claim will relate. Each notice shall show the name of the claimant and bear a statement that the claim shall be limited to its respective component product. The exporter shall endorse the notices, as required, to show the respective interests of the claimants. The notice of exportation shall be numbered in accordance with § 191.52(d) of this part.

(2) *Exporter's summary procedure.* Where more than one party claims the drawback (e.g., a chemical manufactured under drawback regulations is exported in a container also manufactured under drawback regulations), and the parties elect to use the exporter's summary procedure, each drawback claimant shall complete and file a chronological summary of exports for the respective component product to which its claim will relate. Each claimant shall identify in the chronological summary the name of the other claimant or claimants and the component product for which each will claim drawback independently.

(d) *Vessels or aircraft.* For drawback under section 313(g), Tariff Act of 1930, as amended (19 U.S.C. 1313(g)), the claimant shall file with the drawback entry a copy of the part of the construction contract showing that the vessel or aircraft was built for foreign account and ownership. In the case of a vessel, except a warship, the claimant also shall file a certificate of clearance for a foreign port and a certified copy of the registry certificate or, in its place, a certificate of the consul of the foreign nation to which the vessel belongs, showing that the vessel has been documented under the flag of that country. No certificates of clearance or foreign documentation shall be required for a warship.

§ 191.63 Summary of papers filed.

The claimant may file with the drawback entry a summary, in duplicate, of the papers filed showing the date of application for official documents. When verified, one copy of the summary shall be receipted and returned to the claimant, and the other copy attached to the drawback entry.

§ 191.64 Supplementary filing.

With the permission of the regional commissioner, a claimant may amend or correct a drawback entry or file a timely supplemental entry. Corrections or amendments permitted shall be certified by the appropriate parties.

§ 191.65 Certificate of delivery.

(a) *When required.* If the merchandise used in the manufacture of the exported articles was not imported by the manufacturer of the articles, no drawback shall be allowed until the drawback claimant files with the regional commissioner where the claim is to be liquidated a certificate of delivery in duplicate on Customs Form 7543, or official evidence of the existence of the certificate filed at another place. The certificate of delivery must describe the merchandise delivered, tracing it from the custody of the importer to the custody of the manufacturer. If the certificate of delivery covers only one importation,

the manufacturer may refer to it in its certificate of manufacture rather than describe the importation.

(b) *Intermediate transfer.* If the merchandise was not delivered directly from the importer to the manufacturer, each intermediate transfer shall be described on the certificate of delivery certified by the person through whose possession the merchandise passed.

(c) *Consignee as importer.* When the consignee named in an entry summary declares another person to be the actual owner, the consignee shall be considered the importer for drawback purposes, even though the consignee files an owner's declaration under section 485(d), Tariff Act of 1930, as amended (19 U.S.C. 1485(d)). The drawback claimant shall file a certificate of delivery showing the initial transfer from the consignee to the person to whom delivery was made.

(d) *Warehouse transfers and withdrawals.* The person in whose name merchandise is withdrawn from a bonded warehouse shall be considered the importer for drawback purposes. No certificate of delivery is required covering prior transfers of merchandise while in a bonded warehouse.

§ 191.66 Certificate of manufacture and delivery.

(a) *When required.* If the imported merchandise has undergone some process of manufacture before delivery, and the wholly or partially manufactured article thereafter is used in the manufacture of some other article for exportation, or when completely manufactured articles are purchased for exportation without further manipulation, the drawback claimant, whether the manufacturer or the exporter, shall file a certificate of manufacture and delivery on Customs Form 7577.

(b) *Subcontractors.* (1) If a subcontractor performs work, which for drawback purposes does not constitute a manufacture or production, with the use of merchandise the principal plans to make the subject of a drawback claim, and (2) if there is a problem in identifying the merchandise the subcontractor returns to the principal from the merchandise received from the principal, the subcontractor shall complete a certificate of manufacture and delivery. If there is no problem of identification, the subcontractor shall complete only a certificate of delivery. If complementary records are maintained by a subcontractor's principal (see § 191.22(d)), and Customs determines no problems of identification exist, it may waive the filing of certificates of delivery and manufacture for transfers between principal and subcontractor, whether the subcontractor's operation involves manufacture or not.

(c) *Identifying certificates of manufacture and delivery.* Drawback claimants may identify the relevant certificates of manufacture and delivery on drawback entries covering the exported articles rather than describe the importation and manufacture.

(d) *Certification of intermediate transfer.* Any intermediate transfer of manufactured articles shall be certified on the certificate of manufacture and delivery.

(e) *Entry filed at place other than where certificate filed.* If the drawback entry is filed at a place other than where the certificate of manufacture and delivery is on file, the regional commissioner may transmit to the place where the drawback entry is filed an extract on Customs Form 4537

(f) *Special requirements for agency transactions.*—(1) *Requirement of agent.* Each agent manufacturer who conducts operations under § 191.34 of this part shall furnish the principal for whom it processed merchandise a certificate of manufacture and delivery on Customs Form 7577 completing only the portion applicable to the operation so conducted, relating to the substituted or designated merchandise, and identifying the owner of the articles for whom processing was conducted.

(2) *Requirement of principal.* The principal for whom processing was conducted under section 191.34 of this part shall complete and file a certificate of manufacture or drawback entry, as appropriate, and attach to it the certificates from its agent or agents.

§ 191.67 Landing certificates.

(a) *When required.* A landing certificate shall be required:

(1) Whenever the district director at the port of exportation or the port where the drawback entry is filed, or the regional commissioner for the region where the drawback claim is liquidated, has reason to believe that the shipment is not a bona fide exportation;

(2) When Customs Headquarters specifically directs that the landing certificate be produced;

(3) When law or regulations otherwise requires a landing certificate; or

(4) For every aircraft which departs from the United States under its own power if drawback is claimed on the aircraft or any part thereof. A landing certificate for aircraft shall show the exact time of landing in the foreign country and describe the aircraft or parts thereof on which drawback is claimed in sufficient detail to enable Customs officers to identify them with the documentation used to establish exportation, such as the notice of exportation, bill of lading, air waybill, or other approved documentation.

(b) *Time of filing.* Any required landing certificate shall be furnished prior to the liquidation of the entry.

(c) *Signature.* Any required landing certificate shall be signed by a revenue officer of the foreign country to which the merchandise is exported, unless it is shown that the country has no Customs administration, in which case the landing certificate may be signed by the consignee or the carrier's agent at the place of unlading.

(d) *Notice of requirement.* Customs shall provide notice in writing to an exporter or its agent required to supply a landing certificate pursuant to paragraphs (a)(1) or (a)(2) of this section. The exporter or its agent shall file the landing certificate within 1 year from the date of the notice unless Customs Headquarters grants an extension.

(e) *Inability to produce landing certificates.* (1) When a landing certificate is required and cannot be produced, an application for its waiver may be made to the regional commissioner through the district director within the time required for filing the certificate, accompanied by such evidence of clearance and landing abroad as may be available. The application shall be granted if the regional commissioner is satisfied by the evidence submitted that the merchandise has been exported. If the regional commissioner is not so satisfied, he shall transmit the application and its accompanying evidence to Headquarters, U.S. Customs Service, for final determination.

(2) *Required by the district director.* When a landing certificate is required by a district director under paragraph (a)(1) of this section, he may accept other satisfactory evidence of foreign landing in place of the certificate.

Subpart G—Payment and Liquidation of Drawback Claims

§ 191.71 Liquidation.

(a) *Time of liquidation.* Drawback claims may be liquidated after:

(1) Final liquidation of the import entry; or

(2) Deposit of estimated duties on the imported merchandise and before liquidation of the import entry.

(b) *Claims based on estimated duties.*—(1) *Eligibility.* Drawback may be paid on estimated duties if the import entry has not been liquidated and the drawback claimant and any other party

responsible for the payment of liquidated import duties each files a written request for payment of each drawback entry, waiving any right to payment or refund under other provisions of law.

(2) *Adjustment.*—(i) *Drawback entry.* A drawback claim, once liquidated on the basis of estimated duties, thereafter shall not be adjusted by reason of a subsequent liquidation of an import entry.

(ii) *Importer entry.* However, if final liquidation of the import entry discloses that the total amount of import duty is different from the total estimated duties deposited, the party responsible for the payment of liquidated duties, as applicable, shall be liable for 1 percent of all increased duties found to be due on that portion of merchandise recorded on the drawback entry or shall be entitled to a refund of 1 percent of all excess duties found to be paid on that portion of the merchandise recorded on the drawback entry.

(c) *Claims based on liquidated duties.* Drawback shall be based on the final liquidated duties paid that have been made final by the importer's written acceptance of the liquidation or by operation of law.

(d) *Liquidation procedure.* When the drawback claim has been completed by the filing of the entry and other necessary documents, and exportation of the articles has been established, the regional commissioner shall determine drawback due on the basis of the complete drawback claim and the drawback contract.

(e) *Distribution and value for multiple products.*—(1) *Distribution.* Where two or more products result from the manufacture or production of merchandise, drawback shall be distributed to the several products in accordance with their relative values at the time of separation.

(2) *Value.* The values to be used in computing the distribution of drawback where two or more products result from the manufacture and production of merchandise under drawback conditions shall be the market values unless another value is approved by Customs.

(f) *Payment.* The regional commissioner shall certify the amount of drawback due to the person making entry or other person authorized to receive payment under § 191.73 of this subpart.

§ 191.72 Accelerated payment.

(a) *Eligibility.* A drawback claimant not delinquent or otherwise remiss in transactions with Customs is eligible for accelerated payment of drawback on claims which are properly prepared and fully completed in accordance with either Subpart F or N of this part.

(b) *Submission with request.* A claimant who requests accelerated payment of a claim shall file with the claim a computation of the amount due, and, for approval by the regional commissioner, a bond on either Customs Form 7609 or 7611, guaranteeing the refund of any excess payment as provided in section 113.13a of this chapter. In place of filing Customs Form 7609 or 7611, a claimant may provide appropriate coverage by executing the approved rider "P" on a General Term Bond for Entry of Merchandise, Customs Form 7595, at the time of filing Customs Form 7595. Rider "P", whether submitted to the district director with Customs Form 7595 initially or added to that bond later, shall be approved by the regional commissioner. When a rider is to be designated on Customs Form 7595, the amount of the bond shall be increased by the estimated amount of accelerated drawback to be claimed during the term of the bond. If outstanding unliquidated accelerated drawback claims exceed the estimated amount of accelerated drawback, the regional commission or shall require additional bond coverage.

(c) *Approval.* A regional commissioner who approves the claim for accelerated payment shall certify it for payment within 3 weeks after filing. After liquidation, the regional commissioner shall certify payment of any amount due or demand a refund of any excess amount paid.

(d) *Repeated erroneous computation of drawback claims.* Accelerated payment will be denied to claimants who repeatedly file claims in excess of the amount due.

§ 191.73 Person entitled to receive drawback.

(a) *Exporter; reservation by manufacturer or producer.* The person named as exporter on the notice of exportation or in bill of lading, air waybill, freight waybill, Canadian Customs manifest, cargo manifest, or certified copies of these documents, shall be deemed to the exporter and entitled to drawback, unless the manufacturer or producer shall reserve the right to claim drawback. The manufacturer or producer who reserves this right may claim drawback, and he shall receive payment upon production of satisfactory evidence that the reservation was made with the knowledge and consent of the exporter.

(b) *Agent or person designated to receive drawback.* Drawback may be paid to the agent of the manufacturer, producer, or exporter, or to the person the manufacturer, producer, exporter, or agent directs in writing to receive drawback payment.

Subpart H—Internal-Revenue Tax on Flavoring Extracts and Medicinal or Toilet Preparations (Including Perfumery) Manufactured From Domestic Tax Paid Alcohol

§ 191.81 Drawback allowance.

(a) *Drawback.* Section 313(d), Tariff Act of 1930, as amended (19 U.S.C. 1313(d)), provides for drawback of internal-revenue tax upon the exportation of flavoring extracts and medicinal or toilet preparations (including perfumery) manufactured or produced in the United States in part from the domestic tax-paid alcohol (see § 191.4(a)(4)).

(b) *Shipment to Puerto Rico, the Virgin Islands, Guam, and American Samoa.* Drawback of internal-revenue tax on articles manufactured or produced under this subpart and shipped to Puerto Rico, the Virgin Islands, Guam, or American Samoa shall be allowed in accordance with section 7653(c) of the Internal Revenue Code (26 U.S.C. 7653(c)). However, there is no authority of law for the allowance of drawback of internal-revenue tax on flavoring extracts or medicinal or toilet preparations (including perfumery) manufactured or produced in the United States and shipped to Wake Island, Midway Islands, Kingman Reef, Canton Island, Enderbury Island, Johnston Island, or Palmyra Island.

§ 191.82 Procedure.

(a) *General.* Other provisions of this part relating to direct identification drawback shall apply to claims for drawback filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

(b) *Manufacturing record.* The manufacturer of flavoring extracts or medicinal or toilet preparations on which drawback is claimed shall record the products manufactured, the quantity of waste, if any, and a full description of the alcohol. These records shall be available at all times for inspection by Customs officers.

(c) *Additional information required on the manufacturer's proposal.* The manufacturer's proposal shall state the quantity of domestic tax-paid alcohol contained in each product on which drawback is claimed.

(d) *Variance in alcohol content.*—(1) *Variance of more than 5 percent.* If the percentage of alcohol contained in a medicinal preparation, flavoring extract

or toilet preparation varies by more than 5 percent from the percentage of alcohol in the total volume of the exported product as stated in a previously approved proposal, the manufacturer shall apply for a new drawback contract pursuant to section 191.25 of this part. If the variation differs from a previously filed schedule, the manufacturer shall file a new schedule incorporating the change.

(2) *Variance of 5 percent or less.* Variances of 5 percent or less of the volume of the product shall be reported to the regional commissioner where the drawback entries are liquidated. The regional commissioner may allow drawback without specific authorization from Customs Headquarters.

(e) *Customs forms.* The following Customs forms shall be used in place of the corresponding forms used in the case of articles manufactured with the use of imported merchandise:

(1) Drawback Entry for Tax-Paid Alcohol, Customs Form 7579.

(2) Certificate of Manufacture and Delivery, Customs Form 7585.

(3) Certificate of Delivery of Alcohol Tax-Paid, Customs Form 7545.

(f) *Time period for completing claims.* The 3-year period for the completion of drawback claims prescribed in § 191.61 of this part shall be applicable to claims for drawback under this subpart.

(g) *Filing of drawback entries on duty-paid imported merchandise and tax-paid alcohol.* When the drawback entry covers duty-paid imported merchandise in addition to tax-paid alcohol, the claimant shall file one set of entries for drawback of Customs duty and another set for drawback of internal-revenue tax.

(h) *Description of the alcohol.* The description of the alcohol stated in the entry may be obtained from the description on the package containing the tax-paid alcohol.

§ 191.83 Additional requirements.

(a) *Manufacturer claims domestic drawback.* In the case of medicinal preparations and flavoring extracts, the claimant shall file with the drawback entry, or endorse on the entry or certificate of manufacture, a declaration of the manufacturer showing whether a claim has been or will be filed by the manufacturer with the regional regulatory administrator of the Bureau of Alcohol, Tobacco and Firearms for domestic drawback on alcohol under sections 5131, 5132, 5133, and 5134, Internal Revenue Code, as amended (26 U.S.C. 5131, 5132, 5133, and 5134).

(b) *Manufacturer does not claim domestic drawback.*—(1) *Submission of statement.* If no claim has been or will be filed with the Bureau of Alcohol, Tobacco, and Firearms for domestic drawback on medicinal preparations or flavoring extracts, the manufacturer shall submit a statement, in duplicate, setting forth that fact to the appropriate regional regulatory administrator of the Bureau of Alcohol, Tobacco and Firearms for the region in which the manufacturer's factory is located.

(2) *Contents of the statement.* The statement shall show the:

(i) Quantity and description of the exported products;

(ii) Identity of the alcohol used by serial number of package or tank car;

(iii) Name and registry number of the warehouse from which the alcohol was withdrawn;

(iv) Date of withdrawal;

(v) Serial number of the tax-paid stamp or certificate, if any; and

(vi) Customs region where the drawback claim will be filed.

(3) *Verification of the statement.* The regional regulatory administrator, Bureau of Alcohol, Tobacco and Firearms, shall verify receipt of this statement, forward the original of the document to the Customs region designated, and retain the copy.

§ 191.84 Alcohol, Tobacco and Firearms certificates.

(a) *Request.* The drawback claimant or manufacturer shall file a written request with the regional regulatory administrator, Bureau of Alcohol, Tobacco and Firearms, in whose region the alcohol used in the manufacture was withdrawn requesting him to provide the regional commissioner of Customs, with whom the drawback claim will be processed, a tax-paid certificate on Alcohol, Tobacco and Firearms Form 5100.4 (Certificate of Tax-Paid Alcohol).

(b) *Contents.* The request shall state the:

(1) Quantity of alcohol in taxable gallons;

(2) Serial number of each package;

(3) Serial number of the stamp, if any;

(4) Amount of tax paid on the alcohol;

(5) Name, registry number, and location of the warehouse;

(6) Date of withdrawal;

(7) Name of the manufacturer using the alcohol in producing the exported articles;

(8) Address of the manufacturer and his manufacturing plant; and

(9) Customs region where the drawback claim will be processed.

(c) *Request accompanied by Customs Form 7545.* If the request is accompanied by Customs Form 7545 showing any of the information required by paragraph (b) of this section, that information need not be repeated in the request.

(d) *Extracts of Alcohol, Tobacco and Firearms certificates.* If a certification of any portion of the alcohol described in the Bureau of Alcohol, Tobacco and Firearms Form 5100.4 is required for liquidation of drawback entries processed in another region, the regional commissioner of Customs, on written application of the person who requested its issuance, shall transmit a copy of the extract from the certificate for use at that regional office. The regional commissioner shall note that the copy of the extract was prepared and transmitted.

§ 191.85 Liquidation.

The regional commissioner shall determine the amount of drawback due by reference to the certificate of manufacture and the drawback contract under which the drawback claimed is allowable.

§ 191.86 Amount of drawback.

(a) *Claim filed with Bureau of Alcohol, Tobacco and Firearms.* If the declaration required by § 191.83 of this part shows that a claim has been or will be filed with the Bureau of Alcohol, Tobacco and Firearms for domestic drawback, drawback under section 313(d), Tariff Act of 1930, as amended (19 U.S.C. 1313(d)), shall be limited to the difference between the amount of tax paid and the amount of domestic drawback claimed.

(b) *Claim not filed with Bureau of Alcohol, Tobacco and Firearms.* If the declaration and verified statement required by § 191.83 show that no claim has been or will be filed by the manufacturer with the Bureau of Alcohol, Tobacco and Firearms for domestic drawback, the drawback shall be the full amount of the tax on the alcohol used.

(c) *No deduction of 1 percent.* No deduction of 1 percent shall be made in drawback claims under section 313(d), Tariff Act of 1930, as amended (19 U.S.C. 1313(d)).

(d) *Payment.* The drawback due shall be paid in accordance with § 191.71(f) of this part.

Subpart I—Supplies for Certain Vessels and Aircraft

§ 191.91 Drawback allowance.

Section 309, Tariff Act of 1930, as amended (19 U.S.C. 1309), provides for drawback on articles laden as supplies on certain vessels or aircraft of the United States or as supplies including equipment upon, or used in the maintenance or repair of, certain foreign vessels or aircraft (see § 191.4(a)(10)).

§ 191.92 Procedure.

(a) *General.* Other provisions of this part apply to claims filed under this subpart insofar as applicable and not inconsistent with the provisions of this subpart.

(b) *Customs forms.* Drawback notices of lading on Customs Form 7514 shall be filed in place of notices of exportation on Customs Form 7511 or other evidence of exportation (see § 191.93).

§ 191.93 Drawback notice of lading.

(a) *Number of copies and place of filing.* The notice of lading on Customs Form 7514 shall be filed in quadruplicate with the district director at the port of lading.

(b) *Time of filing.* The drawback notice of lading may be filed either before or after lading of the articles. If filed after lading, the notice shall be filed within 3 years after exportation of the articles.

(c) *Contents of notice. The notice of lading shall show:*

(1) Name of the vessel or identity of the aircraft on which articles were or are to be laden;

(2) Number and kind of packages and their marks and numbers;

(3) Description of the articles and their weight (net), gauge, measure, or number,

(4) Name of the exporter; and

(5) Customs region where the drawback entry is to be filed.

(d) *Assignment of numbers and return of one copy.* The district director shall assign a number to each notice of lading and return one copy to the exporter for delivery to the master or authorized officer of the vessel or aircraft.

(e) *Declaration.*—(1) *Requirement.* The master or an authorized officer of the vessel or aircraft, or a representative of the owner or operator of the vessel or aircraft having knowledge of the facts and holding a Customs power of attorney shall complete the section of the drawback notice entitled "Declaration of Master or Other Officer," which was delivered by the exporter.

(2) *Procedure if notice filed before lading.* If the notice is filed before lading of the articles, the declaration must be completed on the copy of the numbered drawback notice that was filed with the district director and returned to the exporter for this purpose.

(3) *Procedure if notice filed after lading.* If the drawback notice is filed after lading of the articles, the drawback claimant may file a separate document containing the declaration required on the Drawback Notice, Customs Form 7514.

(4) *Filing.* The drawback claimant shall file with the district director both the drawback entry and the drawback notice or separate document containing the declaration of the master or other officer or representative.

(f) *Information concerning class or trade.* Information about the class of business or trade of a vessel or aircraft is required to be furnished in support of the drawback entry if the vessel or aircraft is American.

(g) *Vessel or aircraft required to clear or obtain a permit to proceed.* After the vessel or aircraft has cleared or obtained a permit to proceed, the district director at the port of lading shall complete the section entitled "Customs Certification" on one of the copies of the notice of lading. He shall return the completed copy and one other copy to the exporter or the person designated by the exporter for subsequent filing with the drawback entry.

(h) *Vessel or aircraft not required to clear or obtain a permit to proceed.* If the vessel or aircraft is not required to clear or obtain a permit to proceed to another port, the district director shall return to the exporter or the person designated by the exporter two copies of the notice with a statement of the facts in this case for subsequent filing with the drawback entry. The drawback claimant shall file with its claim an itinerary of the vessel or aircraft for the immediate voyage or flight showing that the vessel or aircraft is engaged in a class of business or trade which makes it eligible for drawback.

(i) *Articles laden or installed on aircraft as equipment or used in the maintenance or repair of aircraft.* The regional commissioner where the drawback claim is filed shall require a declaration or other evidence showing to his satisfaction that articles have been laden or installed on aircraft as equipment or used in the maintenance or repair of aircraft.

(j) *Fuel laden on vessels or aircraft as supplies.*—(1) *Composite notice of lading.* In the case of fuel laden on vessels or aircraft as supplies, the drawback claimant may file with the regional commissioner a composite notice of lading on the reverse of Customs Form 7514, for each calendar month describing all of the drawback claimant's deliveries of fuel supplies during the one calendar month at a single port or airport to all vessels or airplanes of one vessel owner or operator or airline.

(2) *Contents of composite notice.* The composite notice shall show for each voyage or flight, either on the reverse of Customs Form 7514 or on a continuation sheet:

(i) Identity of the vessel or aircraft;

(ii) Description of the fuel supplies laden;

(iii) Quantity laden; and

(iv) Date of lading.

(3) *Declaration of owner or operator.* A vessel or airline representative having knowledge of the facts and holding a Customs power of attorney shall complete the section "Declaration of Master or Other Officer" on Customs Form 7514.

(4) *District Director's certification.* The district director shall note the clearance of the vessel or aircraft at the end of each line relating to a voyage or flight.

(k) *Desire to land articles covered by notice of lading.* The master of the vessel or commander of the aircraft desiring to land in the United States articles covered by a notice of lading shall apply for a permit to land those articles under Customs supervision. All articles landed, except those transferred under the original notice of lading to another vessel or aircraft entitled to drawback, shall be considered imported merchandise for the purpose of section 309(c), Tariff Act of 1930, as amended (19 U.S.C. 1309(c)).

§ 191.94 Drawback entry.

The drawback entry shall be filed on Customs Form 7573 or 7575, as applicable, modified to read "lade" (or "use"), "laden" (or "used"), or "lading" (or "using") instead of "export," "exported," or "exporting." The "Declaration of Exportation" shall be amended to read as follows:

Declaration of Lading or Use

I, (member of firm, officer representing corporation, agent, or attorney) of declare that according to my knowledge and belief, the particulars of lading (or use) stated in this entry, the notices of lading, and receipts are correct, and that the merchandise is not to be relanded in the United States or any of its possessions, but is to be (has been) used on the vessels or aircraft so named for (state specifically, such as supplies, equipment, maintenance, or repair) , as specified in section 309, Tariff Act of 1930, as amended.

Date 19

(Shipper or agent)

(Sec. 309, 46 Stat. 690, as amended; 19 U.S.C. 1309)

Subpart J—Meats Cured with Imported Salt

§ 191.101 Drawback allowance.

Section 313(f), Tariff Act of 1930, as amended (19 U.S.C. 1313(f)), provides for the allowance of drawback upon the

exportation of meats cured with imported salt (see § 191.4(a)(6)).

§ 191.102 Procedure.

(a) *General.* Other provisions of this part relating to direct identification drawback shall apply to claims for drawback under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

(b) *Customs form.* The forms used for other drawback claims shall be used and modified to show that the claim is being made for refund of duties paid on salt used in curing meats.

§ 191.103 Refund of duties.

Drawback shall be refunded in aggregate amounts of not less than $100 and shall not be subject to the retention of 1 percent of duties paid.

Subpart K—Materials for Construction and Equipment of Vessels and Aircraft Built for Foreign Accounts and Ownership

§ 191.111 Drawback allowance.

Section 313(g), Tariff Act of 1930, as amended (19 U.S.C. 1313(g)), provides for drawback on imported materials used in the construction and equipment of vessels and aircraft built for foreign account and ownership, or for the government of any foreign country, notwithstanding that these vessels or aircraft may not be exported within the strict meaning of the term (see § 191.4(a)(7)).

§ 191.112 Procedure.

Other provisions of this part relating to direct identification drawback shall apply to claims for drawback filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

§ 191.113 Explanation of terms.

(a) *Materials.* Section 313(g), Tariff Act of 1930, as amended (19 U.S.C. 1313(g)), applies only to materials used in the original construction and equipment of vessels and aircraft and not to materials used for alteration or repair, or to materials not required for safe operation of the vessel or aircraft.

(b) *Foreign account and ownership.* Foreign account and ownership, as used in section 313(g), Tariff Act of 1930, as amended, means only vessels or aircraft built and equipped for the account of an owner or owners residing in a foreign country and having a bona fide intention that the vessel or aircraft, when completed, shall be owned and operated under the flag of a foreign country.

Subpart L—Foreign-Built Jet Aircraft Engines Processed in the United States

§ 191.121 Drawback allowance.

Section 313(h), Tariff Act of 1930, as amended (19 U.S.C. 1313(h)), provides for drawback on the exportation of jet aircraft engines manufactured or produced abroad that have been overhauled, repaired, rebuilt, or reconditioned in the United States with the use of imported merchandise, including parts (see § 191.4(a)(8)).

§ 191.122 Procedure.

Other provisions of this part shall apply to claims for drawback filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

§ 191.123. Drawback entry.

(a) *Filing of entry.* Drawback entries covering these foreign-built jet aircraft engines shall be filed on Customs Form 7575–A, appropriately modified, to show that the entry covers jet aircraft engines processed under section 313(h), Tariff Act of 1930, as amended.

(b) *Contents of entry.* The entry shall show the country in which each engine was manufactured and describe the processing performed thereon in the United States.

§ 191.124 Refund of duties.

Drawback shall be refunded in aggregate amounts of not less than $100, and shall not be subject to the deduction of 1 percent of duties paid.

Subpart M—Merchandise Exported From Continuous Customs Custody

§ 191.131 Drawback allowance.

(a) *General.* Section 557(a), Tariff Act of 1930, as amended (19 U.S.C. 1557(a)), provides for drawback on the exportation, or the shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or Guam, of merchandise upon which duties have been paid continuously in bonded warehouse or otherwise in Customs custody since importation (see § 191.4(a)(11)).

(Sec. 557, 46 Stat. 744, as amended; 19 U.S.C. 1557)

(b) *Guantanamo Bay.* Guantanamo Bay Naval Station shall be considered foreign territory for drawback purposes under this subpart. However, imported merchandise which has remained continuously in bonded warehouse or otherwise in Customs custody since importation is not entitled to drawback of duty when shipped to Puerto Rico, Canton Island, Enderbury Island, or Palmyra Island.

§ 191.132 Merchandise released from Customs custody.

No remission, refund, abatement, or drawback of duty shall be allowed because of the exportation of any merchandise after its release from Government custody, except in the following cases:

(a) When articles are exported on which drawback is expressly provided for by law:

(b) When prohibited articles have been regularly entered in good faith and are subsequently exported or destroyed pursuant to statute and regulations prescribed by the Secretary of the Treasury; or

(c) When articles entered under bond are destroyed within the bonded period, as provided in section 557(c), Tariff Act of 1930, as amended (19 U.S.C. 1557(c)), or destroyed within the bonded period by death, accidental fire, or other casualty, and proof of destruction is furnished to the satisfaction of the Secretary of the Treasury, in which case any accrued duties shall be remitted or refunded and any condition in the bond that the articles shall be exported shall be deemed to have been satisfied (see 19 U.S.C. 1558).

§ 191.133 Continuous Customs custody.

(a) *Merchandise released under an importer's bond and returned.* Merchandise released to an importer under a bond prescribed by § 142.4 of this chapter and later returned to the public stores upon requisition of the district director shall not be deemed to be in the continuous custody of Customs officers.

(b) *Merchandise released under a temporary importation bond.* Merchandise released under a temporary importation bond as provided for in Schedule 8, Part 5, Subpart C, Tariff Schedules of the United States (19 U.S.C. 1202), shall not be deemed to be in the continuous custody of Customs officers.

(c) *Merchandise released from warehouse.* For purpose of this part, in the case of merchandise entered for warehouse, Customs custody shall be deemed to cease when duty has been paid and the district director has authorized the withdrawal of the merchandise.

(d) *Merchandise not warehoused, examined elsewhere than in public stores.*—(1) *General rule.* Except as stated in paragraph (d)(2) of this section, merchandise examined elsewhere than at the public stores, in accordance with

the provisions of § 151.7 of this chapter, shall be considered released from Customs custody upon completion of final examination for appraisement.

(2) *Merchandise upon the wharf.* Merchandise which remains on the wharf by permission of the district director shall be considered to be in Customs custody, but this custody shall be deemed to cease when the Customs officer in charge accepts the permit and has no other duties to perform relating to the merchandise, such as measuring, weighing or gauging.

(Sec. 557, 46 Stat. 744, as amended, 19 U.S.C. 1557)

§ 191.134 Filling the entry.

(a) *Direct export.* At least 6 hours before lading the merchandise on which drawback is claimed, the importer or the agent designated by him in writing shall file with the district director a direct export entry on Customs Form 7512 in duplicate.

(b) *Merchandise transported to another port for exportation.* The importer of merchandise to be transported to another port for exportation shall file in triplicate with the district director an entry naming the transporting conveyance, route, and port of exit. The district director shall certify one copy and forward it to the district director at the port of exit. A bonded carrier shall transport the merchandise in accordance with the applicable regulations. Manifests shall be prepared and filed in the manner prescribed in § 144.37 of this chapter.

§ 191.135 Merchandise withdrawn from warehouse for exportation.

The regulations in Part 18 of this chapter concerning the supervision of lading and certification of exportation of merchandise withdrawn from warehouse for exportation without payment of duty shall be followed to the extent applicable.

§ 191.136 Bill of lading.

(a) *Filing.* In order to complete the claim, a bill of lading covering the merchandise described in the export entry shall be filed within 2 years after the merchandise is exported.

(b) *Contents.* The bill of lading shall show either that the merchandise was shipped by the person making the claim or bear an endorsement of the person in whose name the merchandise was shipped showing that the person making claim is authorized to receive the drawback.

(c) *Limitation of the bill of lading.* The terms of the bill of lading may limit and define its use by stating that it is for Customs purposes only and not negotiable.

(d) *Inability to produce bill of lading.* When a required bill of lading cannot be produced, the person making the drawback entry may request the regional commissioner, through the district director, within the time required for the filing of the bill of lading, to accept a statement setting forth the cause of failure to produce the bill of lading and such evidence of exportation and of its right to make the drawback entry as may be available. The request shall be granted if the regional commissioner is satisfied by the evidence submitted that the failure to produce the bill of lading is justified, that the merchandise has been exported, and that the person making the drawback entry has the right to do so. If the regional commissioner is not so satisfied, he shall transmit the request and its accompanying evidence to Headquarters, U.S. Customs Service, for final determination.

(e) *Extracts of bills of lading.* Regional commissioners may issue extracts from bills of lading filed with drawback entries.

§ 191.137 Landing certificates.

When required, a landing certificate shall be filed within the time prescribed in § 191.67 of this part.

(Sec. 557, 46 Stat. 744, as amended, 19 U.S.C. 1557)

§ 191.138 Procedures.

When the drawback entry has been completed and the bill of lading filed, together with the landing certificate, if required, the reports of inspection and lading made, and the clearance of the exporting conveyance established by the record of clearance in the case of direct exportation or by certificate in the case of transportation and exportation, the regional commissioner shall verify the importation by referring to the import records to ascertain the amount of duty paid on the merchandise exported. To the extent appropriate and not inconsistent with the provisions of this subpart, drawback claims shall be liquidated in accordance with the provisions of §§ 191.61 and 191.71 of this part.

§ 191.139 Amount of drawback.

Drawback due under this subpart shall not be subject to the retention of 1 percent.

(Sec. 557, 46 Stat. 744, as amended; 19 U.S.C. 1557)

Subpart N—Same Condition and Rejected Merchandise Drawback

§ 191.141 Same Condition Drawback.

(a) *General Provisions.* (1) *Allowance.* Section 313(j), Tariff Act of 1930, as amended (19 U.S.C. 1313(j)), provides for drawback on imported merchandise exported in the same condition as when imported, or destroyed under Customs supervision and not used within the United States before such exportation or destruction (see § 191.4(a)(9)).

(2) *Time of exportation or destruction.* Drawback shall be allowed on imported merchandise if exported or destroyed under paragraph (a)(1) of this section before the close of the 3-year period beginning on the date of importation.

(3) *Use.* The performing of incidental operations (including, but not limited to, testing, cleaning, repacking, and inspecting) on the imported merchandise itself, not amounting to manufacture or production for drawback purposes shall not be treated as a use of that merchandise for purposes of applying paragraph (a)(1) of this section.

(b) *Filing and documentation prior to exportation.* (1) *Filing.* An exporter-claimant who desires to export merchandise with drawback under 19 U.S.C. 1313(j) shall file with the regional commissioner, or the district (area) director, or port director, if authority has been delegated to that official by the regional commissioner, a completed Customs Form 7539. The exporter-claimant also shall furnish a copy of the import entry or identify the import entry, date of entry, and port of entry under which the merchandise was imported into the United States. It shall certify that the merchandise is in the same condition as when imported and not used within the United States before such exportation. Transfers shall be documented by certificates of delivery (see § 191.65).

(2)(i) *Time of filing.* The completed Customs Form 7539 shall be filed with the regional commissioner or district (area) director, or port director, if authority has been delegated to that official by the regional commissioner, at least 5 working days prior to the date of intended exportation of the merchandise, unless the Customs officer approves a shorter filing period.

(ii) *Waiver of prior notice of intent to export.* A request for a waiver of prior notice by an exporter-claimant shall be in writing to the regional commissioner, or the district (area) director or port director, if authority has been delegated to that official by the regional commissioner. The appropriate Customs officer may waive prior notice at any

time for any exporter-claimant. An exporter-claimant shall be granted this waiver after filing with the appropriate Customs official six consecutive claims free of substantial error, provided that such exporter-claimant has operated under the same condition program for a minimum of six months. An exporter-claimant who repeatedly files inaccurate claims may have the privilege (of filing without prior notice) revoked. Customs will so notify the exporter-claimant in writing of the revocation as soon as possible.

(3) *Examination.* (i) *Decision to examine.* Within 3 working days after Customs Form 7539 is filed, the exporter-claimant shall be notified whether Customs will examine the merchandise. If the exporter-claimant is not notified within the 3-day period, the exporter-claimant shall export the merchandise without delay.

(ii) *Time and place of examination.* If the appropriate Customs officer determines to examine the merchandise, he shall notify the exporter-claimant of the time and place of the examination. The examination shall be completed within 5 working days after the filing of Customs Form 7539, unless failure to examine during this period is caused by the exporter-claimant. If the examination is completed at a port other than the port of intended exportation, the exporter-claimant shall transport the merchandise in-bond to the port of exportation.

(iii) *Extent of examination.* The appropriate Customs officer may permit release of merchandise without examination, or may examine routinely (to the extent he determined necessary) items exported, provided such examinations do not exceed 10 percent of the total items exported (i.e., merchandise in one of ten claims could be examined). If the Customs officer believes it is necessary to examine more than 10 percent of the exported items, he shall present the reasons to Headquarters and obtain approval for such other examination.

(c) *Completion of drawback entry for exported merchandise.* Within 3 years after exportation of merchandise under § 191.141(b), an exporter-claimant shall complete his drawback claim by filing with the same Customs officer who received Customs Form 7539 evidence of exportation under the procedures described in § 191.52 (notice of exportation) or § 191.54 (certified notice of exportation by mail) of this part.

(d) *Alternative procedure for exported merchandise.* In place of the procedures set forth in §§ 191.141 (b) and (c), an exporter-claimant may apply with the regional commissioner, or the district (area) director, if authority has been delegated to that official by the regional commissioner, for permission to use the exporter's summary procedure (see § 191.53). If the request is approved, the exporter-claimant shall complete a drawback claim no later than 3 years after exportation. When this alternative procedure is used, no prior notice of intent to export or examination is necessary for purposes of obtaining drawback.

(e) *General.* The provisions relating to direct identification drawback shall apply to claims for drawback under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart. Specifically, §§ 191.22 (b) and (c), and 191.65 are applicable to drawback under 19 U.S.C. 1313(j).

(f) *Drawback on destroyed merchandise.* (1) *Procedure.* A claimant desiring to destroy merchandise to collect drawback under same condition drawback shall file with the regional commissioner, or the district (area) director or port director, if authority has been delegated to that official by the regional commissioner, a completed Customs Form 7539. At least 7 working days prior to the intended date of destruction, the exporter—claimant shall notify the appropriate Customs officer of the time and place of destruction, by submitting Customs Form 3499 with Customs Form 7539 at the location wherein the destruction is to occur. It shall certify that the merchandise is in the same condition as when imported and not used within the United States before such destruction. Destruction of merchandise after such notification on Customs Form 3499 shall be deemed to have occurred under Customs supervision.

(2) *Completion of drawback entry.* After destruction, the claimant and district director or his designee who witnessed destruction shall certify on Customs Form 7539 or an attachment thereto the time and place of destruction.

(g) *Liquidation of the drawback claim.* (1) Entries shall be liquidated or reliquidated in the region or districts as determined by the regional commissioner.

(2) Upon review of a drawback claim by the liquidator, if the claim is determined to be incomplete, the liquidator shall notify promptly the claimant, who shall then have the opportunity to amend the claim prior to its denial. The claimant shall respond in writing within 20 days of Customs notice.

(3) If the claim is denied, the claimant shall be notified in accordance with §§ 159.9 and 159.10 of this chapter.

§ 191.142 Merchandise not conforming to sample or specifications or shipped without the consent of the consignee.

(a) *General.* (1) Section 313(c), Tariff Act of 1930, as amended (19 U.S.C. 1313(c)), provides for drawback upon the exportation of imported merchandise not conforming to sample or specifications or shipped without the consent of the consignee. The merchandise must be returned to Customs custody for exportation within 90 days after release from Customs custody unless Customs authorizes a longer period (see § 191.4(a)(3)).

(2) Rejected merchandise may be the subject of a same condition drawback claim in accordance with § 191.141(a)–(f).

(b) *Procedure.* (1) The exporter-claimant shall file with any district director a drawback entry on Customs Form 7539 at the time the merchandise is returned to Customs custody.

(2) The exporter-claimant also shall submit documentation to establish that the merchandise does not conform to sample or specifications or was shipped without the consent of the consignee.

(3) The district director shall approve the place of delivery of the merchandise if he is satisfied that the merchandise does not conform to sample or specifications or was shipped without the consent of the consignee.

(4) The exporter-claimant shall return the merchandise to Customs custody within 90 days after the date the merchandise was originally released from Customs custody unless an extension of time is specifically authorized in writing by the district director or other appropriate Customs official. A reasonable extension of time will be granted if the failure to comply with the 90 day provision is beyond the control of the applicant. Drawback shall be denied on merchandise returned to Customs custody after the authorized time period, including any extension.

(5) The exporter-claimant shall export the merchandise under Customs supervision and shall provide proof of exportation by filing with the same district director who received the Customs Form 7539 a notice of exportation certified by a Customs officer under § 191.52(c)(1), or otherwise supported by those documents set out in § 191.52(c)(2) except that if a bill of lading is submitted proving exportation, no notice of exportation shall be required. The exporter-claimant also may establish exportation by mail as set out in § 191.154.

(6) Drawback under this section is payable to the exporter-claimant who is the importer of record or the actual

owner named in the import entry. The procedures for liquidating a drawback claim shall be the same as under § 191.141(g).

Subpart O—Distilled Spirits, Wines, or Beers Which Are Unmerchantable or Do Not Conform to Sample or Specifications

§ 191.151 Refund of taxes.

Section 5062(c), Internal Revenue Code, as amended (26 U.S.C. 5062(c)), provides for the refund, remission, abatement or credit to the importer of internal-revenue taxes paid or determined incident to importation, upon the exportation, or destruction under Customs supervision, of imported distilled spirits, wines, or beer found after entry to be unmerchantable or not to conform to sample or specifications and which are returned to Customs custody (see § 191.4(b)).

§191.152 Procedure.

The export procedure shall be the same as that provided in § 191.142(b) except that the claimant must be the importer and as otherwise provided in this subpart.

§191.153 Documentation.

(a) *Entry.* Customs Form 7539, appropriately modified, shall be used to claim drawback under this subpart.

(b) *Documentation.* The drawback entry for unmerchantable merchandise shall be accompanied by a certificate of the importer setting forth in detail the facts which cause the merchandise to be unmerchantable and any additional proof that the district director requires to establish that the merchandise is unmerchantable.

§191.154 Return to Customs custody.

There is no time limit for the return to Customs custody of distilled spirits, wine, or beer subject to refund of taxes under the provisions of this subpart.

§191.155 No exportation by mail.

Merchandise covered by this subpart shall not be exported by mail.

§191.156 Destruction of merchandise.

(a) *Action by the importer.* A drawback claimant who proposes to destroy rather than export the distilled spirits, wine, or beer shall state that fact on Customs Form 7539.

(b) *Action by Customs.* Distilled spirits, wine, or beer returned to Customs custody at the place approved by the district director where the drawback entry was filed shall be destroyed under the supervision of the Customs officer who shall certify the destruction on Customs Form 3499.

§191.157 Liquidation.

No deduction of 1 percent of the internal revenue taxes paid or determined shall be made in allowing claims under section 5062(c), Internal Revenue Code, as amended (26 U.S.C. 5062(c)).

§191.158 Time limit for exportation or destruction.

Merchandise not exported or destroyed within 90 days from the date of notification of acceptance of the drawback entry shall be considered unclaimed, unless upon written request by the importer, the district director grants an extension of not more than 90 days.

Subpart P—Merchandise Transferred to a Foreign Trade Zone From Customs Territory

§191.161 Drawback allowance.

The fourth provision of section 3 of the Foreign Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81c) provides for drawback on merchandise transferred to a foreign trade zone from Customs territory for the sole purpose of exportation, destruction (except destruction of distilled spirits, wines, and fermented malt liquors), or storage, provided there is compliance with the regulations of this subpart (see § 191.4(a)(12)).

§191.162 Zone-restricted merchandise.

Merchandise in a foreign trade zone for the purposes specified in § 191.161 shall be given status as zone-restricted merchandise on proper application (see § 146.25 of this chapter).

(Sec. 3, 48 Stat. 999, as amended; 19 U.S.C. 81c)

§191.163 Articles manufactured or produced in the United States.

(a) *Procedure for filing documents.* Except for the evidence of exportation procedure, the drawback procedures prescribed in this part shall be followed as applicable to drawback under this subpart on articles manufactured or produced in the United States with the use of imported or substituted merchandise, and on flavoring extracts or medicinal or toilet preparations (including perfumery) manufactured or produced with the use of domestic tax-paid alcohol.

(b) *Notice of transfer.*—(1) *Proof of export.* The notice of zone transfer on Customs Form 7514 shall be in place of the documents under subpart E to establish the exportation.

(2) *Filing procedures.* The notice of transfer, in triplicate, shall be filed with the district director where the foreign trade zone is located prior to the transfer of the articles to the zone, or within 3 years after the transfer of the articles to the zone. A notice filed after the transfer shall state the foreign trade zone lot number.

(3) *Contents of notice.* Each notice of transfer shall show the:

(i) Number and location of the foreign trade zone;

(ii) Number and kind of packages and their marks and numbers;

(iii) Description of the articles, including weight (gross and net), gauge, measure, or number;

(iv) Name of the transferor, and

(v) Place where the drawback entry is to be filed.

(c) *Action of the district director on the notice of transfer.—(1) Assignment of number.* The district director shall assign a number to each notice of transfer, return one copy to the transferor and forward another copy to the Customs officer at the foreign trade zone.

(2) *Certification and forwarding notice to transferor.* After articles have been received in the zone, the Customs officer in charge at the zone shall certify on a copy of the notice of transfer the receipt of the articles and forward the notice to the transferor or the person designated by the transferor.

(d) *Foreign trade zone operator's certificate.* Before filing the certified copy of the notice of transfer with the drawback entry, the transferor shall obtain the foreign trade zone operator's certification of receipt of the articles in the zone (see § 191.164(d)(2)).

(e) *Drawback entries.* Drawback entries shall be filed on Customs Form 7573, 7575, 7579, or 7585, as applicable, appropriately modified, to indicate that the merchandise was transferred to a foreign trade zone. The "Declaration of Exportation" shall be modified as follows:

DECLARATION OF TRANSFER TO A FOREIGN TRADE ZONE

I, ———— (member of firm, officer representing corporation, agent, or attorney), of ————, declare that, to the best of my knowledge and belief the particulars of transfer stated in this entry, the notices of transfer, and receipts are correct, and that the merchandise was transferred to a foreign trade zone for the sole purpose of exportation, destruction, or storage, not to be returned to the customs territory of the United States for domestic consumption.

Dated: ————.

————,

Transferor or agent.

(Sec. 3, 48 Stat. 999, as amended, 19 U.S.C. 81c)

§ 191.164 Merchandise transferred from continuous Customs custody.

(a) *Procedure for filing claims.* The procedure described in Subpart M of this part shall be followed as applicable, to drawback on merchandise transferred to a foreign trade zone from continuous Customs custody.

(b) *Drawback entry.* Prior to the transfer of merchandise from continuous Customs custody to a foreign trade zone, the importer or a person designated in writing by the importer for that purpose shall file with the district director a direct export entry on Customs Form 7512 in duplicate. The district director shall forward one copy of Customs Form 7512 to the Customs officer in charge at the zone.

(c) *Certification by Customs and zone operator.* After the merchandise has been received in the zone, the Customs officer in charge at the zone shall certify on the copy of Customs Form 7512 the receipt of the merchandise and forward the form to the transferor or the person designated by the transferor to obtain the foreign trade zone operator's certification. After obtaining and executing the certifications provided for in paragraph (d) of this section, the transferor shall resubmit Customs Form 7512 to the district director in place of the bill of lading required by § 191.136 of this part.

(d) *Modification of drawback entry.* (1) *Indication of transfer.* Customs Form 7512 shall be modified to indicate that the merchandise is to be transferred to a foreign trade zone.

(2) *Endorsement.* The transferor or person designated by the transferor shall endorse Customs Form 7512 as follows, for execution by the foreign trade zone operator:

Certification of Foreign Trade Zone Operator

The merchandise described in the entry was received from ———— on ————, 19——; in Foreign Trade Zone No. ————, ———— (City and State)
Exceptions: ————, ————
(Name and title)
By ———— (Name of operator)

(3) *Transferor's declaration.* The transferor shall declare on Customs Form 7512 as follows:

Transferor's Declaration

I, ———— of the firm of ————, declare that the merchandise described in this entry was duly entered at the customhouse on arrival at this port; that the duties thereon have been paid as specified in this entry; and that it was transferred to Foreign Trade Zone No. ———, located at ————, (City and State) for the sole purpose of exportation, destruction, or storage, not to be returned to the customs territory of the United States for domestic consumption. I further declare that to the best of my knowledge and belief, this merchandise is the same in quantity, quality, value, and package, unavoidable wastage and damage excepted, as it was at the time of importation; that no allowance nor reduction of duties has been made for damage or other cause except as specified in this entry; and that no part of the duties paid has been refunded by drawback or otherwise.

Dated:
———— (Transferer)

(Sec. 3, Stat. 999, as amended; 19 U.S.C. 81c)

§ 191.165 Same condition drawback merchandise and merchandise not conforming to sample or specifications or shipped without the consent of the consignee.

(a) *Procedure for filing claims.* The procedures described in § 191.141, relating to same condition drawback merchandise, and § 191.142 relating to rejected merchandise, shall be followed as applicable to drawback under this subpart for same condition drawback merchandise and merchandise not conforming to sample or specifications, or merchandise shipped without the consent of the consignee.

(b) *Drawback entry.* Before transfer of the merchandise to a foreign trade zone, the importer or a person designated in writing by the importer for the purpose shall file with the district director an entry on Customs Form 7539 in duplicate. The district director will forward one copy of Customs Form 7539 to the Customs officer in charge at the zone.

(c) *Certification by Customs and zone operator.* After the merchandise has been received in the zone the Customs officer in charge at the zone shall certify on the copy of Customs Form 7539 the receipt of the merchandise and forward the form to the transferor or the person designated by the transferor to obtain the foreign trade zone operator's certificate. After obtaining and executing the certifications provided for in paragraph (d) of this section, the transferor shall resubmit Customs Form 7539 to the district director, in place of the bill of lading required by § 191.136 of these regulations.

(d) *Modification of drawback entry.* (1) *Indication of transfer.* Customs Form 7539 shall be modified to indicate that the merchandise is to be transferred to a foreign trade zone.

(2) *Endorsement.* The transferor or person designated by the transferor shall endorse Customs Form 7539 as follows, for execution by the foreign trade zone operator:

Certification of Foreign Trade Zone Operator

The merchandise described in this entry was received from ———— on ————, 19——, in Foreign Trade Zone No. ————, ————(City and State).
Exceptions: ————.
———— (Name of operator)
By ———— (Name and title)

(3) *Transferor's declaration.* The transferor shall declare on Customs Form 7539 as follows:

Transferor's Declaration

I, ————, of the firm of ————, declare that the merchandise described in the within entry was duly entered at the customhouse on arrival at this port; that the duties thereon have been paid as specified in this entry; and that it was transferred to Foreign Trade Zone No. ————, located at ————, (City and State) for the sole purpose of exportation, destruction, or storage, not to be returned to the customs territory of the United States for domestic consumption. I further declare that to the best of my knowledge and belief, that said merchandise is the same in quantity, quality, value, and package as specified in this entry; that no allowance nor reduction in duties has been made; and that no part of the duties paid has been refunded by drawback or otherwise.

Dated: ————.
———— (Transferor)

(Sec. 3, 48 Stat. 999, as amended; 19 U.S.C. 81c)

§ 191.166 Person entitled to receive drawback.

The person named in the foreign trade zone operator's certification on the notice of transfer or the drawback entry, as applicable, shall be considered to be the transferor. Drawback shall be paid to the transferor or to the person to whom the transferor directs in writing to be paid.

(Sec. 3, 48 Stat. 999, as amended; 19 U.S.C. 81c)

(R.S. 251, as amended, secs. 313, 624, 46 Stat. 693, as amended, 759, 77A Stat. 14; 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Hdnt. 11), 1313, 1624))

(Approved by the Office of Management and Budget under Control Number 1515-0094.)

Conforming Amendments

Parts 7, 10, 113, 145, and 158

To conform the Customs Regulations to the changes made by the removal of Part 22, Customs Regulations and the addition of new Part 191, Customs Regulations, Parts 7, 10, 113, 145, and 158 are amended in the following manner:

PART 7—CUSTOMS RELATIONS WITH INSULAR POSSESSIONS AND GUANTANAMO BAY NAVAL STATION

§ 7.1 [Amended]

1. § 7.1(a), Customs Regulations is amended by substituting "§§ 191.85 and

191.86" in place of "§ 22.26" appearing at the end of the paragraph.

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

§ 10.38 [Amended]

§ 10.38(f), Customs Regulations, is amended by substituting "§ 191.10" in place of "§ 22.43".

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 113—CUSTOMS BONDS

1. Subpart B—"Classes and Approval of Bonds" of the index to Part 113 is amended by adding after heading §113.13, a new heading §113.13a to read "Bonds approved by the regional commissioner."

2. Section 113.11(b), Customs Regulations, is amended by renumbering paragraph (b)(2) as (b)(3), and adding a new paragraph (b)(2) to read as follows:

§113.11 Names and classes of bonds.

* * * * *

(b) * * *

(2) Those approved by the regional commissioner (see section 113.13a).

3. Part 113 is amended by adding a new §113.13a to read as follows:

§113.13a Bonds approved by the regional commissioner.

The following bonds are subject, after execution, to approval by the regional commissioner:

(a) *Single entry bond, Customs Form 7609.* Bond for accelerated payment of Drawback (Single Entry), Customs Form 7609, in an amount equal to the amount of accelerated payment to be received on the entry covered.

(b) *Term bond, Customs Form 7611.* Bond for Accelerated Payment of Drawback (Term), Customs Form 7611, in an amount sufficient to cover the maximum amount of accelerated payment to be outstanding at any time during the period of the bond.

§113.14 [Amended]

4. Sections 113.14(x)(1) and (x)(2), Customs Regulations, are removed and reserved.

5. Section 113.14(y), Customs Regulations, is amended by substituting "section 191.53" in place of "section 22.7."

6. Section 113.16 is amended by revising the section heading and first sentence to read as follows:

§113.16 Amount of bond approved by the regional commissioner or director.

The amount of any Customs bond approved by the regional commissioner or district director shall not be less than $100, except when the law or regulation expressly provides that a lesser amount be taken. * * *

7. Section 113.18 is amended by revising the first sentence to read as follows:

§113.18 Retention of approved bonds.

All the bonds approved by the regional commissioner, described in section 113.13a, or by the district director, described in section 113.14, except the Bond of Claimant of Seized Goods for Costs of Court, Customs Form 4615, shall remain on file in their respective offices.

(R.S. 251, as amended, secs. 623, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

PART 145—MAIL IMPORTATIONS

§145.72 [Amended]

Section 145.72(e), Customs Regulations, is amended by substituting "section 191.142" in place of "22.33."

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 158—RELIEF FROM DUTIES ON MERCHANDISE LOST, DAMAGED, ABANDONED, OR EXPORTED

§158.45 [Amended]

Section 158.45(b), Customs Regulations, is amended by substituting "Part 191" in place of "Part 22" at the end of the paragraph.

(R.S. 251, as amended , sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PARALLEL REFERENCE TABLE

[This table shows the relation of sections in revised Part 191 to Part 22]

Revised section	Superseded section
191.0	New.
191.1	New.
191.2	New.
191.3	22.41.
191.4	22.1.
191.5	22.46.
191.6	22.45.
191.7	22.44.
191.8	New.
191.9	New.
191.10(a), (b), (c), and (d)	22.43.
191.10(e)	New.
191.11	22.42.
191.12	New.
191.13	22.2.
191.21(a)	New.
191.21(a)(1)	22.4(k).
191.21(a)(2)	New.
191.21(b)	22.4(h).
191.21(c)	New.
191.21(d)	22.4(h).
191.21(e)	22.4(f).
191.22(a)(1)(i)(ii)(iii)(iv)	22.4(a).
191.22(a)(1)(v)	22.4(b).
191.22(a)(2), (3), (4), and (5)(i)	22.4(a).

PARALLEL REFERENCE TABLE—Continued

[This table shows the relation of sections in revised Part 191 to Part 22]

Revised section	Superseded section
191.22(a)(5)(ii)	New.
191.22(b)	22.4(b) and (c).
191.22(c)	22.4(f).
191.22(d)	22.4(e).
191.22(e)	22.4(d).
191.23(a) and (b)	22.4(j).
191.23(c)	22.4(l).
191.23(d)	22.4(m).
191.24	22.49(p).
191.25	22.4(o).
191.26	22.4(r).
191.31	New.
191.32(a)(1), (2), (3)	22.5(a).
191.32(a)(4)	22.4(b).
191.32(b)	22.5(b).
191.32(c)	22.5(e).
191.32(d)	22.5(c).
191.32(e)	New.
191.33	New.
191.34	New.
191.41	New.
191.42	New.
191.43	New.
191.44	New.
191.45	New.
191.51(a), (b), and (c)	22.7(a).
191.51(d)	New.
191.51(e)	New.
191.52(a), (b), and (c)	22.7(b), (c)(1).
191.52(d)	22.7(c)(2).
191.53(a)	22.7(d)(1).
191.53(b), (c), (d), and (e)(1)	22.7(d)(2).
191.53(e)(2)	22.7(d)(1).
191.53(e)(3)	22.7(d)(3).
191.54(a)	22.8(a), (c).
191.54(b)	22.8(b).
191.55(a) and (b)	22.9(a).
191.56	22.11.
191.57	22.12.
191.61	22.13(a).
191.62(a)(1)	22.13(a).
191.62(a)(2)	22.13(a), (c), and (e).
191.62(a)(3)	22.13(d).
191.62(a)(4)	22.13(a).
191.62(b)	22.13(a).
191.62(c)	New.
191.62(d)	22.13(f).
191.63	22.13(b).
191.64	22.13(g).
191.65	22.15.
191.66(a)	22.16(a).
191.66(b)	New.
191.66(c)	22.16(b).
191.66(d)	22.16(c).
191.66(e)	22.16(d).
191.66(f)	New.
191.67(a)	22.17(a).
191.67(b)	22.17(b).
191.67(c)	22.17(b).
191.67(d)	22.17(c).
191.67(e)(1)	22.17(e).
191.67(e)(2)	22.17(d).
191.71(a)	22.20(a).
191.71(b)	22.20(b).
191.71(c)	22.20(c).
191.71(d)	22.20(d).
191.71(e)	22.20(e).
191.71(f)	22.20(f).
191.72	22.20a.
191.73(a)	22.21(a).
191.73(b)	22.21(b).
191.81(a)	22.22(a).
191.81(b)	22.22(b).
191.82(a)	22.23(a).
191.82(b)	22.24.
191.82(c)	22.23(b).
191.82(d)	22.23(f).
191.82(e)	22.23(d).
191.82(f)	22.23(a).
191.82(g)	22.23(c).
191.82(h)	22.24.
191.83	22.23(e).
191.84(a)	22.25(a).
191.84(b)	22.25(b).
191.84(c)	22.25(c).
191.84(d)	22.25(d).
191.84(e)	22.25(e).
191.85	22.26(a).

PARALLEL REFERENCE TABLE—Continued

[This table shows the relation of sections in revised Part 191 to Part 22]

Revised section	Superseded section
191.86(a) and (b)	22.26(b)
191.86(c)	22.26(d).
191.86(d)	22.26(c).
191.91	22.18(a).
191.92	22.18(b).
191.93(a), (b), (c), (d) and (e)	22.19(c).
191.93(f)	22.18(h).
191.93(g) and (h)	22.18(d).
191.93(i) and (j)	22.18(j).
191.93(k)	22.18(g).
191.94	22.18(k).
191.101	New.
191.102(a)	22.19(a).
191.102(b)	22.19(b).
191.103	22.19(a).
191.111	New.
191.112	New.
191.113	New.
191.121	22.26a(a).
191.122	New.
191.123(a) and (b)	22.26a(b).
191.124	22.26a(a) and a(c).
191.131	22.27(a) and 22.27(b)
191.132	22.28(a).
191.133(a) and (b)	22.28(b).
191.133(c)	22.28(d).
191.133(d)(1)	22.28(e).
191.133(d)(2)	22.28(c).
191.134(a)	22.29(a).
191.134(b)	22.29(b).
191.135	22.29(c).
191.136(a), (b), and (c)	22.29(d).
191.136(d)	22.29(g).
191.136(e)	22.20(i).
191.137	22.29(h).
191.138	22.30(a) and (b).
191.139	22.30(a).
191.141	New.
191.142	22.31–22.35.
191.151	New.
191.152	New.
191.153	New.
191.154	New.
191.155	New.
191.156	New.
191.157	New.
191.158	New.
191.161	22.36(a).
191.162	22.36(b).
191.163(a)	22.37(a).
191.163(b)(1)	22.37(a).
191.163(b)(2)	22.37(b) and (c).
191.163(b)(3)	22.37(b).
191.163(c) and (d)	22.37(d).
191.163(e)	22.37(e).
191.164(a), (b), and (c)	22.38(a).
191.164(d)	22.38(b).
191.165(a), (b), and (c)	22.39(a).
191.165(d)	22.39(b).
191.166	22.40.

PARALLEL REFERENCE TABLE

[This table shows the relationship of sections in Part 22 to revised Part 191]

Old section	New section
	191.0.
	191.1.
	191.2.
22.1	191.4.
22.2	191.13.
22.3	Deleted.
	191.21(a) and (a)(2).
22.4(a)	191.22(a)(1) (i)–(iv). 191.22(a)(2)–(5)(f). 191.22(a) (5), (ii)
22.4(b)	191.22(a)(1)(v), 191.22(b); 191.32(a)(4).
22.4(c)	191.22(b).
22.4(d)	191.22(e).
22.4(e)	191.22(g).
22.4(f)	191.22(c).
22.4(g)	Deleted.
22.4(h)	191.21(b), (d). 191.21(c)
22.4(i)	191.21(e).
22.4(j)	191.23(a), (b).
22.4(k)	191.21(a)(1). 191.21(a)(2).
22.4(l)	191.23(c).
22.4(m)	191.23(d).
22.4(n)	Deleted.
22.4(o)	191.25.
22.4(p)	191.24.
22.4(q)	Deleted.
22.4(r)	191.26. 191.31.
22.5(a)	191.32(a) (1)–(3).
22.5(b)	191.32(b).
22.5(c)	191.32(e).
22.5(d)	Deleted.
22.5(e)	191.32(c). 191.33. 191.34.
22.6(a)–(g)	Deleted.
22.6(g–1)	Deleted.
22.6(h) and (i)	Deleted.
22.7(a)	191.51(a)–(c). 191.51(d) and (e).
22.7(b)	Deleted.
22.7(c)(1)(b)	191.52(a)–(c).
22.7(c)(2)	191.52(d).
22.7(d)(1)	191.53(a), (e)(2).
22.7(d)(2)	191.53(b)–(d); (e)(1).
22.7(d)(3)	191.53(e)(3).
22.8(a)–(c)	191.54(a)–(b).
22.9(a)	191.55(a)–(b).
22.9(b)	Deleted.
22.10	Deleted.
22.11	191.56.
22.12	191.57.
22.13(a)	191.51, 191.62(a)(1) and (2) (4); 191.62(b).
22.13(b)	191.63, 191.67(b).
22.13(c) and (e)	191.62(a)(2).
22.13(d)	191.62(a)(3) 191.62(c).
22.13(f)	191.62(d).
22.13(g)	191.64.
22.15	191.65.
22.16(a)	191.66(a). 191.66(b)
22.16(b)	191.66(c).
22.16(c)	191.66(d).
22.16(d)	191.66(e). 191.66(f).
22.17(a)	191.67(a).
22.17(b)	191.67(c).
22.17(c)	191.67(d).
22.17(d)	191.67(e)(2).
22.17(e)	191.67(e)(1).
22.18(a)	191.91.
22.18(b)	191.92.
22.18(c)	191.93(a)–(e).
22.18(d)	191.93(g) and (h).
22.18(e)	Deleted.
22.18(g)	191.93(k).
22.18(h)	191.93(f).
22.18(j)	191.93(i) and (j).
22.18(k)	191.94.
22.19(a)	191.101. 191.102(a). 191.103.
22.19(b)	191.102(b). 191.111. 191.112. 191.113.
22.20(a)–(d)	191.71(a)–(d).
22.20(e)	191.71(e).
22.20(f)	191.71(f).
22.20a	191.72.
22.21(a)–(b)	191.73(a)–(b).
22.22(a) and (b)	191.61(a) and (b).
22.23(a)	191.82(a), (f).
22.23(b)	191.82(c).
22.23(c)	191.82(g).
22.23(d)	191.82(e).
22.23(e)	191.83.
22.23(f)	191.82(d).
22.24	191.82(b) and (h).
22.25(a)–(c) and (e)	191.84(a)–(d).
22.25(d)	Deleted.
22.26(a)	191.65.
22.26(b)	191.86(a) and (b).
22.26(c)	191.86(d).
22.26(d)	191.86(c).
22.26a(a)	191.121. 191.122.
22.26a(b)	191.123(a) and (b).
22.26a(a), a(c)	191.124.
22.27(a) and (b)	191.131.
22.28(a)	191.132.
22.28(b)	191.133(a) and (b).
22.28(c)	191.133(d)(2).
22.28(d)	191.133(c).
22.28(e)	191.133(d)(1).
22.29(a) and (b)	191.134(a) and (b).
22.29(c)	191.136.
22.29(d)	191.136(a)–(c).
22.29(e)	Deleted.
22.29(f)	191.136(e).
22.29(g)	191.136(d).
22.29(h)	191.137.
22.30(a) and (b)	191.138.
22.30(a)	191.139. 191.141
22.31–22.36	191.142. 191.151–191.158
22.35(a)	191.161.
22.36(b)	191.162.
22.37(a)	191.163(a).
22.37(a)	191.163(b)(1).
22.37(b), (c)	191.163(b)(2).
22.37(b)	191.163(b)(3).
22.37(d)	191.163(c) and (d).
22.37(e)	191.163(e).
22.38(a)	191.164(a)–(c).
22.38(b)	191.164(d).
22.39(a)	191.165(a)–(c).
22.39(b)	191.165(d).
22.40	191.166.
22.41	191.3.
22.42	191.11. 191.12
22.43	191.10(a)–(d). 191.10(e).
22.44	191.7. 191.8 191.9
22.45	191.6.
22.46	191.5. 191.41–191.45

Attachment—Analysis of Drawback Revision

We have reviewed the proposed revisions to drawback in order to assess the need to complete an economic impact analysis consistent with (a) the Regulatory Flexibility Act (RFA) or (b) Executive Order 12291. We conclude that the impact magnitude does not meet the criteria of the Executive Order as specified in Section 1 (b), and thus a regulatory impact analysis need not be initiated. And, in respect to the RFA, the proposal's impact will not reach a significant level. In fact, the proposal's major effects will focus on *simplifying procedures* in which the small operator applying for drawback benefits.

Drawback refers to the refund of import duties and taxes upon that merchandise's export. Numerous different kinds and types of drawback exist.

TABLE 1.—DRAWBACK PAID

[Millions of dollars]

Fiscal year:	
1980	$177.9
1981	274.9
1982	261.6

TABLE 2.—1982 DRAWBACK PAID BY REGION

	1982 total (millions of dollars)	Dollars per entry filed
Total	$261.6	$7,200
North East	34.8	5,800
New York	62.6	4,200
South East	26.5	15,300
South Central	37.5	38,400
South West	8.2	5,700
Pacific	35.8	5,800
North Central	56.2	11,400

TABLE 3.—TOTAL NUMBER OF DRAWBACK ENTRIES

[Thousands]

	Filed	Liquidated
Fiscal year:		
1978	20.3	17.9
1979	21.2	21.5
1980	24.3	23.2
1981	29.1	26.7
1982	36.3	34.1

TABLE 4.—REGIONAL DRAWBACK ENTRIES FILED

	Fiscal year 1982	Fiscal year 1983 through April
North East	6,012	3,123
New York	15,012	8,639
South East	1,732	1,239
South Central	977	520
South West	1,429	1,021
Pacific	6,158	4,783
North Central	4,934	2,935
Total	36,264	22,260

However, the most frequently used types are (1) "direct identification" drawback (the export of merchandise comprised wholly or partly of the imported goods); (2) "substitution" drawback (use of domestic merchandise in an exported product, substituting for drawback refund purposes the domestic component for the same previously imported component); and (3) "same condition" drawback (export or destruction of merchandise within 3 years of its importation and without use within the U.S. during that period).

Scope of Drawback Facility

About 5,000 companies apply for drawback refunds yearly with the 100 largest of these groups accounting for most of the claims. Claims totaled $261.6 million in FY 1982 (see Table 1) with the greatest volume refunded in North East and North Central Regions (see Table 2). As the practice of drawback has become more widely known, the number of entries has expanded. Over the last four fiscal years, drawback entries filed rose by nearly 80 percent to 36,000 (see Table 3). Customs processing has more than kept pace with this expansion with liquidations over the same period expanding by 91 percent. Again, New York was the largest region of filing, followed by North East and Pacific (see Table 4).

Principal Changes by the Revision

The proposed revisions result in greater operational simplification and clarification than at present, particularly for the most frequently used classes of drawback. In the few cases of substantive change, those changes have the practical effect of liberalizing prior requirements, with clear benefit to claimants.

For example, the proposed application procedure has been simplified with the elimination of CF 4477. Instead, Customs will publish and provide to potential claimants a series of sample drawback proposals. Also, drawback claims at present are subject to nearly 100 percent verification. Under the proposed revisions, an audit verification approach will be implemented, speeding up the claims process. In modifying an existing drawback contract, a claimant at present would have to submit a new application. Under the revisions, he will simply provide a supplemental statement to Customs, in effect revising the original contract. In another principal change regarding proof of export, at present the good's landing certificate is required to establish the fact of export. The revisions will provide greater flexibility to claimants by allowing the use of several other documents.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 82N-0342]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers; Colorants for Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to establish a category called "colorants for polymers" for coloring agents used in polymeric food-contact materials. The action is based on a proposal published in the **Federal Register** of June 6, 1972. The agency is not including in this final rule the various colorants that were listed in the 1972 proposal, but will publish in a future issue of the **Federal Register** a document that addresses those colorants.

DATES: Effective October 14, 1983; comments by November 14, 1983.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mary W. Lipien, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, D.C. 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 6, 1972 (37 FR 11255), FDA published a proposed regulation entitled, "Colorants for plastic," that would establish a section in the Code of Federal Regulations (CFR) for coloring agents used in plastics intended for food-contact use. That document also proposed to list a number of substances for use as colorants in plastics. The proposal responded to five food additive petitions that had requested approval for the use of colorants in various food-contact plastics.

The agency received eight comments on the proposal, but none of these comments addressed the use of the term "colorant" or the issue of establishing such a category in the CFR. This regulation establishes the category of "colorants for polymers" and clarifies the terminology that is to be properly applied to these substances. It does not affect the regulatory status of those substances currently approved or proposed for use as colorants for polymers, even though existing regulations may refer to such substances by another name. Thus, despite the number of years that has elapsed since the proposal, the agency believes that it is appropriate to proceed to a final rule without reproposing the matter.

This final rule establishes a section in the CFR entitled "colorants for polymers." The agency has chosen to use the term "polymers" because it is scientifically more precise than the term "plastics."

This regulation does not deal with the colorant substances listed in the 1972 proposal. FDA will publish its response to those comments on the proposal that addressed the individual substances and its decision on those substances in a future issue of the **Federal Register.** Elsewhere in this issue of the **Federal Register,** FDA is publishing a final regulation that permits the use of an optical brightener for use as a colorant in food-contact polymers. That substance will be included in the list of